

2693

No. 12916

United States
Court of Appeals
for the Ninth Circuit

THE TEXAS COMPANY, a corporation,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Transcript of Record

Petition to Review and Petition for Enforcement of Order of
The National Labor Relations Board

FILED

SEP 6 1951

Phillips & Van Orden Co., 870 Broadway Street, San Francisco, Calif.

PAUL P. O'BRIEN
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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GENERAL COUNSEL EXHIBIT No. 1-E
NLRB-501
(12-48)

United States of America
National Labor Relations Board

CHARGE AGAINST EMPLOYER
First Amendment

Do Not Write in This Space

Case No.: 21-CA-375.

Date Filed: 3/17/49.

No. of Workers Employed: 1000.

Nature of Employer's Business: Producing-
Manufacturing and marketing Petroleum Products.

Important—Read Carefully

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with Section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions: File an original and 4 copies of this charge with the NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. Employer against whom charge is brought: The Texas Company.

Address of Establishment: 929 So. Broadway,
Los Angeles, California.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) Subsections (1) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge: The above Company by its Officers and Agents have violated Section 8 (a) 1 and 3 of the National Labor Relations Act by discriminating against me for allegedly refusing to perform work directed by them during the period of a strike between said Company and the Oil Workers International Union, C.I.O. Such discrimination included asking me to perform work of striking employees which was not normally performed by supervisory personnel, and by discriminatorily discharging me for alleged refusal to perform such work.

They further discriminated against me by refusal to reinstate me into a job covered by the collective bargaining Agreement after strike settlement, even though they had placed me back into the status of an employee as defined by the National Labor Relations Act, by requesting me to perform the duties and functions of employees covered by contract.

The above Company further discriminatorily refused to re-employ me in any capacity upon my making unconditional application for reinstatement on November 16, 1948, for any job from the labor classification upward; and have continuously refused, since that date, to re-employ me,

even though they have hired other persons into jobs for which I had made application who had never previously worked for the Texas Company in any capacity.

I, therefore, ask that the Board find that the Company must reinstate me, in accordance with the terms and provisions of the existing labor contract, and to be made whole for any loss of earnings suffered by me as a result of the acts of the Company.

(Signed) Geo. Cody

3. Full name of labor organization, including local name and number, or person filing charge; George Cody.
4. Address: 4120 Long Beach Blvd., Long Beach, California. Telephone No. 485-41.
5. Full name of national or international labor organization of which it is an affiliate or constituent unit: Oil Workers International Union—C.I.O.
6. Address of national or international, if any: 308 Brower Building, Bakersfield, California. Telephone No. Bakersfield 46-216.
7. Declaration:

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

/s/ By GEO. CODY

(Signature of representative or
person filing charge)

Date: 3-17-49.

[Stamped]: Received Mar. 17, 1949 NLRB

Wilfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80.)

GENERAL COUNSEL EXHIBIT No. 1-FF

United States of America

Before The National Labor Relations Board
Twenty-First Region

Case No. 21-CA-295

In the Matter of

THE TEXAS COMPANY

and

ROBERT R. RISSMAN

Case No. 21-CA-375

In the Matter of

THE TEXAS COMPANY

and

GEORGE CODY

FIRST AMENDED CONSOLIDATED
COMPLAINT

It having been charged by Robert R. Rissman, acting on behalf of fifty (50) individuals whose names appear on the attached charge in Case No. 21-CA-295, George Cody having filed the charges mentioned in the caption, and the General Counsel by appropriate Order having consolidated both charges, that The Texas Company, hereinafter called Respondent, has engaged in and is engaging in unfair labor practices affecting commerce as set forth

and defined in the National Labor Relations Act, as amended, Public Law 101—80th Congress, First Session, effective August 22, 1947, hereinafter called the Act; the General Counsel of the National Labor Relations Board by the Regional Director for the Twenty-First Region, designated by the Board's Rules and Regulations, Series 5, as amended, Section 203.15, hereby issues this First Amended Consolidated Complaint and alleges the following:

1. Respondent, a Delaware corporation with its headquarters in New York City, is engaged in the production, manufacture and distribution of petroleum products in various parts of the United States, including field and refining operations at and near Los Angeles and Ventura, California, which last mentioned operations are hereinafter referred to as the Plant. During the past calendar year at its Plant operations Respondent produced and refined petroleum and petroleum products of a value in excess of \$1,000,000, and during the same period of time in excess of fifty per cent (50%) of such products were transported by Respondent, or others on its behalf, to points outside the State of California. At all times material hereto Respondent has been engaged in and is engaged in operations at the Plant affecting commerce within the meaning of Section 2 (6) of the Act.

2. Oil workers International Union, Local 128, affiliated with the Congress of Industrial Organizations, hereinafter called the Union, is a labor organization within the meaning of Section 2 (5) of the Act.

3. On or about September 4, 1948, a substantial number of Respondent's employees at the Plant went on a strike called by the Union for the purpose of enforcing economic demands then being made by the Union as collective bargaining agent of such employees and the following named employees remained on strike until on or about October 6, 1948.

Abbiatti, F. W.	Milton, Joseph R.
Anderson, Joe L.	Montgomery, Robert W.
Buckmaster, H. E.	Moore, C. O.
Bullock, R. J.	Neal, Homer J.
Coonis, P. E.	Nyman, Theodore
Cullen, W. J.	Pence, H. W.
Davis, George, Jr.	Price, J. H.
Dees, C. H.	Redden, Thos. B.
DeGroodt, L. B.	Riddle, H. E.
Dorum, Anthony E.	Roberts, J. L.
Fessenden, Charles W.	Rubottom, Roger H.
Flippen, E. J.	Russell, John B.
Galloupe, W. H.	Summerfelt, John B.
Gothard, Elmer T.	Swift, John E.
Hartman, J. A.	Symons, R. D.
Jackson, H. H.	Thompson, L. B.
Ladd, Leroy H.	Townsend, D. B.
Lair, N. A.	Tracy, Lloyd D.
Leithead, Leland	Tracy, Lloyd E.
Lucas, H. B.	West, W. W.
Manion, Carl W.	Williams, Hannibal
Mashburn, W. D.	Williams, John A.
Mawson, W.	Wren, R. G.
McNamara, Edward	Young, J. W.
Melville, T. F.	

4. On or about October 6, 1948, and on various dates thereafter, well known to Respondent, the employees named in paragraph 3 above unconditionally offered to return to work and abandon the strike. On these dates, and at all times thereafter, Respondent, by its officers, agents and representatives, refused and failed to reinstate each and all of these employees because of their membership in and activities on behalf of the Union, and because they had gone on the afore-mentioned strike and engaged in concerted activities as adherents of the Union.

5. From on or about September 4 to November 1, 1948, Respondent, by its officers, agents and representatives, interfered with, restrained and coerced its striking employees by:

(a) Addressing to such striking employees direct, personal and repeated appeals and requests to abandon their strike and return to work, despite the fact well known to Respondent that the Union as the collective bargaining representative of the striking employees was continuing to prosecute such strike in connection with its bargaining demands.

(b) Individually urging striking members of the Union to return to work and accept Respondent's collective bargaining offers despite the fact, well known to Respondent, that the Union had rejected such offers as collective bargaining representative of the employees.

(c) Conditioning the return to work of strikers on the loss of their accumulated seniority earned as employees of Respondent.

6. By the acts, conduct and omissions set forth in

paragraphs 4 and 5 hereof the strike of Respondent's employees was prolonged and extended and converted from an economic strike into an unfair labor practice strike.

7. On or about November 16, 1948, and thereafter, George Cody was, on his application, refused employment by Respondent because of his concerted activities on behalf of the Union.

8. By the acts, conduct and omissions set forth in paragraphs 4 and 7 hereof, Respondent did discriminate and is now discriminating in regard to the hire, tenure, terms and conditions of employment of its employees to discourage membership in the Union and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

9. By the acts, conduct and omissions set forth in paragraphs 4, 5, 6 and 7 hereof Respondent has interfered with, restrained and coerced its employees in the exercise of their rights guaranteed to them by Section 7 of the Act, and Respondent did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

10. The acts, conduct and omissions of Respondent set forth in paragraphs 4, 5, 6 and 7, occurring in connection with the business of Respondent as described above, have a close, intimate and substantial relationship to commerce as defined in Section 2 (6) of the Act, and have led, and tend to lead, to labor disputes burdening and obstructing commerce and

the free flow of commerce as defined in Section 2 (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twenty-First Region, this 18th day of October, 1949, issues this First Amended Consolidated Complaint against The Texas Company.

/s/ HOWARD F. LeBARON,
Regional Director, National Labor Relations Board,
Twenty-First Region.

GENERAL COUNSEL EXHIBIT No. 1-HH

[Title of Board and Cause.]

ANSWER TO FIRST AMENDED
CONSOLIDATED COMPLAINT

Comes Now Respondent, The Texas Company, and withdraws its Answer to Consolidated Complaint filed on May 9, 1949, and for its Answer to the First Amended Consolidated Complaint herein:

I.

Admits the allegations of Paragraph 1.

II.

Admits the allegations of Paragraph 2.

III.

Admits that the employees named in Paragraph 3 went on strike on or about September 4, 1948, but denies that said employees ceased striking on or about October 6, 1948.

IV.

Except as hereinafter admitted, denies generally and specifically each and every, all and singular, the allegations of paragraph 4.

Avers that on October 8, 1948, John B. Summerfelt and C. O. Moore offered to return to work, that said offer was accepted by Respondent on that date, and that said John B. Summerfelt and C. O. Moore were scheduled to return to work, but that neither said John B. Summerfelt nor C. O. Moore returned to work as scheduled. Avers further than when said John B. Summerfelt and C. O. Moore next offered to return to work on October 13, 1948, all available jobs in the bargaining unit in which they had worked had been filled.

Avers further that, except as indicated herein above, the employees named in paragraph 3 offered to return to work on the dates specified below, at which times all available jobs had been filled.

Avers that the employees named in Paragraph 3 offered to return to work by letter dated November 1 and received by Respondent on November 3, 1948, except as indicated below:

Abbiatti, F. W., applied by letter dated November 3, 1948.

Coonis, P. E., applied by letter dated November 3 and received by Respondent November 6, 1948.

DeGroodt, L. B., applied by letter dated November 3 and received by Respondent November 5, 1948.

Lair, N. A., applied by letter dated November 3 and received by Respondent November 4, 1948.

Mashburn, W. D., applied by letter dated Novem-

ber 3 and received by Respondent November 8, 1948.

Pence, H. W., applied by letter dated November 3, 1948.

Price, J. H., applied by letter dated November 3 and received by Respondent November 4, 1948.

Riddle, H. E., applied by letter dated November 3 and received by Respondent November 8, 1948.

Swift, John E., applied by letter dated November 18 and received by Respondent November 23, 1948.

Williams, Hannibal, applied orally on November 5, 1948.

Williams, John A., applied orally on November 16, 1948.

Avers further that various of the employees named in Paragraph 3, from time to time have been offered and some have accepted temporary employment in Respondent's operations.

The following employees named in Paragraph 3 have been employed by Respondent in permanent positions and are now employed:

Buckmaster, H. E., employed on November 16, 1948.

Ladd, L. H., employed on November 16, 1948.

Melville, T. F., employed on November 23, 1948.

Roberts, J. L., employed on April 30, 1949.

Thompson, L. B., employed on March 14, 1949.

Wren, R. G., employed on November 19, 1948.

V.

Denies generally and specifically each and every, all and singular, the allegations of Paragraph 5.

VI.

Denies generally and specifically each and every, all and singular, the allegations of Paragraph 6.

VII.

Denies generally and specifically each and every, all and singular, the allegations of Paragraph 7. Avers that George Cody was discharged for cause on or about September 28, 1948, and for that reason only he was and is refused employment; that said George Cody was a supervisor as said term is defined in Section 2(11) of the National Labor Relations Act, as amended; and that because of the provisions of Section 2 (3) and the "for cause" provisions of Section 10(c) of said Act, the complaint as to said George Cody should be dismissed.

VIII.

Denies generally and specifically each and every, all and singular, the allegations of Paragraph 8.

IX.

Denies generally and specifically each and every, all and singular, the allegations of Paragraph 9.

X.

Denies generally and specifically each and every, all and singular, the allegations of Paragraph 10.

XI.

Alleges that the Complaint in this matter should be dismissed in its entirety because the matters in dispute upon which the allegations are based were settled by agreement between the Respondent and the Union and that the charge in Case No. 21-CA-239,

which was based upon the same events and contained substantially the same allegations as contained in the charges upon which this Complaint is based, was withdrawn by the Union on November 18, 1948, with prejudice, and said withdrawal was approved by the Acting Regional Director, Twenty-First Region, National Labor Relations Board, on November 19, 1948.

XII.

Notwithstanding all other allegations contained herein, Respondent moves that the Complaint be dismissed insofar as it relates to W. W. West named in Paragraph 3 thereof, because the name of said W. W. West does not appear in any of the charges upon which the Complaint is based.

Wherefore, Respondent prays that the First Amended Consolidated Complaint herein be dismissed.

J. A. McNAIR

CHARLES M. BROOKS and

WALLACE E. AVERY

/s/ By CHARLES M. BROOKS,

Attorneys for Respondent, The
Texas Company.

State of California,
County of Los Angeles—ss.

E. B. Liles, being sworn, says: That he is the Assistant Secretary of The Texas Company, a corporation, Respondent in the foregoing action, and is authorized to make this verification for and on behalf

of said corporation; that he has read the foregoing Answer to the First Amended Consolidated Complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters he believes them to be true.

/s/ E. B. LILES

Subscribed and sworn to before me this 21st day of October, 1949.

[Seal] /s/ ADA L. COLEMAN,

Notary Public in and for said County and State.

My Commission expires Sept. 30, 1951.

Affidavits of Service by Mail attached.

[Stamped]: Received Oct. 24, 1949 NLRB.

GENERAL COUNSEL EXHIBIT No. 1-II

[Title of Board and Cause.]

MOTION TO DISMISS

I.

The Texas Company, Respondent herein, moves the Trial Examiner to dismiss the First Amended Consolidated Complaint issued on the 18th day of October, 1949, in this matter, for the following reasons:

(A) Paragraphs 3, 4, 5, and 6 of said Complaint are based on charges and amended charges filed in Case No. 21-CA-295, which involve the same incidents and contain substantially the same allega-

tions as the charge in Case No. 21-CA-239, which was withdrawn with prejudice.

1. On October 22, 1948, the Oil Workers International Union, CIO, herein called the Union, filed unfair labor practice charges naming several companies, including The Texas Company, in Case No. 21-CA-239. The said charge is attached hereto as Appendix A. The aforesaid charge, like the one upon which the aforementioned paragraphs of the aforesaid Complaint are based, grew out of the strike of September 4, 1948, as described in Paragraph 3 of said Complaint. Many of the allegations in the former charge are the same or similar to those in the latter charge.

On November 18, 1948, J. Elro Brown, District Director of the Union, executed a request for withdrawal of the charge in Case No. 21-CA-239, with prejudice, insofar as it concerned The Texas Company. On November 19, 1948, Charles K. Hackler, Acting Regional Director, approved said withdrawal request. A copy thereof is attached hereto as Appendix B.

2. The charge in Case No. 21-CA-239 specifically refers to the "natural gasoline and laboratory," the "Los Angeles Basin production, drilling, and maintenance," and the "Ventura production" operations of The Texas Company. These are the same operations of Respondent which are referred to in the allegations of Paragraphs 3, 4, 5, and 6 of the aforesaid Complaint.

3. On or about September 23, 1948, Respondent

filed an Action for an injunction and damages in the Superior Court of the State of California, in and for the County of Los Angeles, against the Union and others. Said Action in the Superior Court was based upon acts and occurrences during the strike referred to in Paragraph 3 of the aforesaid Complaint.

4. In order to settle the disputes involved in the said Superior Court Action and in the charge in Case No. 21-CA-239, Respondent agreed to and did dismiss the said Action in the Superior Court in consideration of the Union's withdrawal of the charge in Case No. 21-CA-239. The stipulation providing for the dismissal of the Superior Court Action is attached hereto as Appendix C, and provides in the second paragraph thereof that "each and all of the parties have settled the dispute existing between them." Attached hereto as Appendix D is an affidavit by Wallace E. Avery, Attorney for Respondent, which describes in some detail the above-described settlement.

(B) Despite the above-described settlement and the withdrawal of the charge with prejudice, the Union has continued to press and is pressing the charge filed by one Robert R. Rissman in Case No. 21-CA-295, which constitutes the basis for the allegations of Paragraphs 3, 4, 5, and 6 of the aforesaid Complaint.

1. The Union appealed for review by the General Counsel of the National Labor Relations Board of

the partial dismissal by the Regional Director of the Twenty-First Region of the charge in Case No. 21-CA-295, although said charge was filed by one Robert R. Rissman. This appeal is a part of the record of the National Labor Relations Board and was signed by Charles F. Armin as International Representative of the Union and approved by J. Elro Brown as District Director of the Union. This is the same J. Elro Brown who signed the request for withdrawal of the charge in Case No. 21-CA-239.

2. The Union filed an Answer to Respondent's request for withdrawal of the complaint and dismissal of the charge in Case No. 21-CA-295. Said Answer is a part of the records of the National Labor Relations Board in this case.

The above statement are all based upon documents of record in this case. In view thereof, it is submitted that Paragraphs 3, 4, 5, and 6 of the First Amended Consolidated Complaint in this matter should be dismissed without further proceeding, because to prosecute the Respondent under said Complaint would violate the practices of the National Labor Relations Board regarding settlements between parties which are approved by the Board's agents, would contravene the spirit and policy of the National Labor Relations Act, as amended, and would be contrary to public policy.

II.

The Texas Company, Respondent herein, further moves the Trial Examiner to dismiss the First Amended Consolidated Complaint issued on the

18th day of October, 1949, in this matter, for the following further reasons:

(A) George Cody, the Complainant in Case No. 21-CA-375, the charge in which case is the basis for the allegations in Paragraph 7 of the aforesaid Complaint, was a Supervisor as defined in Section 2 (11) of the National Labor Relations Act, as amended, at the time he was discharged from the employ of Respondent on September 28, 1948, and is, therefore, excluded from the provisions of the Act because he is not an employee as defined in Section 2 (3) of said Act.

1. Paragraph 1 of the charge in Case No. 21-CA-375 admits that the said Cody was a Supervisor at the time of his last employment with Respondent.

2. The National Labor Relations Board may not issue an order directing the reinstatement or employment of any person who is not an employee within the meaning of the Act.

3. Therefore, since Cody is not an employee within the meaning of the Act because he occupied a supervisory job, the Board may not order the Respondent to reinstate or employ him.

(B) The charge in Case No. 21-CA-239, which was settled and withdrawn as described above, specifically referred to the alleged violation complained of in Paragraph 7 of the aforesaid Complaint in Paragraph (J) of the aforesaid charge.

In view of the statements in "A" above, all of which are based upon documents of record in this case, the National Labor Relations Board is pre-

cluded by the letter and the spirit of the National Labor Relations Act, as amended, from ordering Respondent to reinstate or employ the said George Cody mentioned in Paragraph 7 of the aforesaid Complaint. Moreover, because of the statements in "B" above, which are based upon documents of record in this case, the National Labor Relations Board is precluded for policy reasons from ordering Respondent to reinstate or employ said George Cody.

Wherefore, The Texas Company, Respondent herein, respectfully moves the Trial Examiner to dismiss the First Amended Consolidated Complaint in its entirety.

J. A. McNAIR

CHARLES M. BROOKS and
WALLACE E. AVERY

/s/ By CHARLES M. BROOKS,
Attorneys for Respondent, The
Texas Company.

APPENDIX "A"

United States of America
National Labor Relations Board

CHARGE AGAINST EMPLOYER

1. Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that:

Name of Employer	Address	No. of Employees
Union Oil Company of California	617 W. 7th St. Los Angeles, Calif. 425 1st St. San Francisco, Calif.	2200

Name of Employer	Address	No. of Employees
Standard Oil Company of Calif.	605 W. Olympic Blvd., Los Angeles, Calif. 225 Bush St., San Francisco, Calif.	4400
Shell Oil Co., Inc.	1008 W. 6th St., Los Angeles, Calif. 100 Bush St., San Francisco, Calif.	2150
Lloyd Corporation, Ltd.	5410 Wilshire Blvd., Los Angeles, Calif.	40
Texas Company	929 S. Broadway, Los Angeles, Calif.	1300
Tide Water Associated Oil Co.	Pacific Electric Bldg., Los Angeles, Calif. 79 New Montgomery St., San Francisco, Calif.	3000
Richfield Oil Corporation	555 S. Flower St., Los Angeles, Calif.	1050
The Ohio Oil Company	437 S. Hill St., Los Angeles, Calif.	100

The above mentioned companies are engaged in the exploration, producing, refining, transporting and marketing of oil and oil products. Said companies have engaged and are engaging in unfair labor practices within the meaning of Section 8 (a) subsections (1) (3) and (5) of said Act, in that:

2. (A) Oil Workers International Union, and its locals 2, 5, 6, 19, 120, 128, 356, 445, 534, 547, 581 are and for some time past have been the duly certified collective bargaining agents of certain employees of the above mentioned companies in appropriate units known as:

Name of Employer	Collective Bargaining Unit
Union Oil Company of Calif.	Oleum and Wilmington Refineries Los Angeles Bulk Plant
Standard Oil Company of Calif.	El Segundo Refinery Richmond Refinery
Shell Oil Co., Inc.	Wilmington-Domingoes Refinery Martinez Refinery Pipe Line Field Dept., Production, Drilling and Natural Gasoline Guager Unit
Lloyd Corporation, Ltd. Texas Company	Production and Natural Gasoline Los Angeles Works and Terminal Los Angeles Package Terminal Pipe Line Division of the Pacific Coast Bargemen Los Angeles Works, Clerical Unit Los Angeles Package Terminal, Clerical Unit Natural Gasoline and Laboratory Los Angeles Basin Production, Drilling and Maintenance Filmore Works Ventural Production
Tide Water Associated Oil Company	Santa Fe Springs Clerical Watson Clerical So. California Pipe Line, San Joaquin Valley Pipe Line, and Watson Refinery Production and Drilling Manufacturing-Ventura Gas Department Bargemen Automotive Mechanics Avon Refinery Watson Laboratory
Richfield Oil Corporation	Production and Refining, Natural Gasoline, Harbor Terminals and Pipe Line
The Ohio Oil Co.	Production, Drilling and Natural Gasoline

(B) Since on or about September 3, 1948 the above mentioned companies, and each of them, by their officers, agents and employees have refused to bargain in good faith with the Oil Workers International Union, and its duly certified affiliated local unions.

(C) The above mentioned companies, by their officers, agents and employees have further refused to bargain on any term or condition of employment unless one of the other companies so bargain.

(D) Said companies by their officers, agents and employees have conspired to refuse to grant to the undersigned union any terms or conditions of employment, unless said term or condition of employment is granted by any of the other companies.

(E) Said companies, by their officers, agents and employees have further threatened employees that unless they cease their participation in the strike and return to work immediately, that they would be discharged.

(F) Said companies, by their officers, agents and employees have further threatened all employees with the loss of their insurance, pension and other rights and benefits unless they cease their participation in the strike.

(G) Said companies, by their officers, agents and employees further refused to bargain with the Union on the terms and conditions of a collective bargaining agreement unless the union terminated the strike.

(H) Said companies, by their officers, agents and employees, have refused and are now refusing to bargain with the undersigned union on the return to work of strikers.

(I) Said companies, by their officers, agents and employees have refused and are now refusing to bargain with the undersigned union on the companies announced intention of contracting work out to private contractors; such work has traditionally been performed by members of the undersigned union and the work is within the appropriate unit as established by the National Labor Relations Board.

(J) Said companies, by their officers, agents and employees, have discharged supervisors who have refused to cross picket lines, or who have expressed sympathy with and given support to the strike now being conducted by the undersigned union.

(K) By the acts set forth above said companies acting in concert have engaged in a course of conduct designed to and having the effect of interfering with the operation, function and activity of the undersigned union, for the purpose of destroying said union as the collective bargaining agent of their employees.

(L) By the acts set forth above and by other acts and conduct, the above-mentioned companies, their officers, agents and employees, did interfere with, restrain and coerce their employees in the exercise

of the rights guaranteed to them by the Labor Management Relations Act.

The undersigned further charges that said unfair practices are unfair labor practices affecting commerce within the meaning of said Act.

3. Each of the officers of the union has executed a non-communist affidavit as required by Section 9 (h) of the Act.

4. Upon information and belief, the national or international labor organization of which this organization is an affiliate or constituent unit has also complied with Section 9 (f), (g), and (h) of the Act.

5. Oil Workers International Union (CIO), 301 E. 5th St., Fort Worth, Texas. Telephone number 34441.

/s/ By O. A. KNIGHT
President

Subscribed and sworn to before me this 22 day of Oct. 1948, at Los Angeles as true to the best of deponent's knowledge, information and belief.

[Seal] /s/ GRACE V. SMITH,
Notary Public.

My Commission expires April 7th, 1951.

Case No. 21-CA-239.

Dated filed: 10-22-48. 9(f), (g), (h) cleared: 10-25-48. D.B.

APPENDIX "C"

In the Superior Court of the State of California
in and for the County of Los Angeles

No. 550197

THE TEXAS COMPANY, a Delaware corporation,
Plaintiff,

vs.

OIL WORKERS INTERNATIONAL UNION, an
unincorporated association, affiliated with the
Congress of Industrial Organizations; et al.,
Defendants.

STIPULATION RE DISMISSAL AS TO DE-
FENDANTS OIL WORKERS INTERNA-
TIONAL UNION, et al.,

Whereas, the Complaint for injunction and for
damages was filed herein and a Temporary Restraining
Order issued on September 23, 1948, enjoining
and restraining certain activities as to the defend-
ants herein, and

Whereas, subsequent thereto each and all of the
parties have settled the dispute existing between
them,

Now, Therefore, It Is Hereby Stipulated between
plaintiff and defendants Oil Workers International
Union, Oil Workers International Union Long
Beach Local No. 128, Oil Workers International
Union Ventura Local No. 120, and all individual

defendants who are affiliated with or members of said unions who have heretofore appeared in the above entitled action, through their respective counsel who have been heretofore duly authorized, as follows:

1. That the above entitled action shall be dismissed as to all of said defendants without prejudice to any of the parties to this stipulation. Said dismissal further to be without damages or costs to either plaintiff or said defendants or any of them.

2. That plaintiff and the surety or sureties on its bond on Temporary Restraining Order in the sum of \$1,000.00 heretofore filed in the above entitled action shall be released from any damages or claims of any kind or character whatsoever arising out of the issuance or handling of the Temporary Restraining Order issued herein.

3. That the parties hereto mutually release each other from any and all claims for damages of any kind or character whatsoever that either may have against the other arising out of or connected with the above entitled action.

Dated: November 18, 1948.

J. A. McNAIR

WALLACE E. AVERY

GIBSON, DUNN & CRUTCHER

/s/ By GEORGE H. WHITNEY,

Attorneys for Plaintiff.

EDISES, TREUHAFT &
CONDON

ROBERT N. CONDON
LINDSAY P. WALDEN
LOUIS N. WOLF
A. L. WIRIN

/s/ By LINDSAY P. WALDEN,
Attorneys for defendants Oil Workers International
Union, an unincorporated association, et al.

It is so ordered.

Dated: November 19, 1948.

/s/ CLARENCE M. HANSON,
Judge of the Superior Court.

APPENDIX "D"

United States of America
Before The National Labor Relations Board
Twenty-First Region

[Causes Nos. 21-CA-295 - 21-CA-375.]

AFFIDAVIT OF WALLACE E. AVERY

State of California,
County of Los Angeles—ss.

Wallace E. Avery, being first duly sworn, deposes
and says:

That he is an attorney duly licensed to practice
law in the State of California, employed by The
Texas Company.

That on or about September 23, 1948, The Texas

Company filed an action for an injunction and damages in the Superior Court of the State of California, in and for the County of Los Angeles, against the Oil Workers International Union, CIO, and others; that a temporary restraining order and an order to show cause were issued by the Court, which were extended from time to time by stipulation of the parties.

That on or about October 22, 1948, an unfair labor practice charge was filed with the National Labor Relations Board, Twenty-First Region, by said Union against said Company and others, and that said charge was given Case No. 21-CA-239.

That from time to time prior to November 18, 1948, affiant and other Company representatives and representatives of said Union, including Lindsay P. Walden, General Counsel of said Union, negotiated with reference to a settlement of the Superior Court action and the unfair labor practice charges. That on November 18, 1948, J. Elro Brown, District Director of said Union, and said Lindsay P. Walden proposed to affiant to request the withdrawal with prejudice of the charges in Case No. 21-CA-239 if said Company would dismiss its action against said Union and others, including John Summerfelt, J. L. Roberts, C. O. Moore, and O. E. West. That upon said date affiant obtained the consent of officials of said Company to dismiss said action upon the condition that said Union would withdraw its charges in Case No. 21-CA-239 and would not file any further charges concerning anything arising out of the

strike. That with this understanding in mind, affiant and George H. Whitney, an attorney associated with the firm of Gibson, Dunn and Crutcher, drafted a stipulation dismissing said action, a photostat copy of which is attached hereto and a request that the charge in Case No. 21-CA-239 be withdrawn with prejudice. That on said date affiant and said George H. Whitney called upon J. Elro Brown and Lindsay P. Walden at the Alexandria Hotel in Los Angeles and presented said documents to them. That upon the assurance of J. Elro Brown and Lindsay P. Walden that said Union would not further harass the Company by filing or instigating the filing of any other unfair labor practice charges against said Company, because of anything arising out of the strike, said stipulation dismissing said Superior Court action was executed on behalf of the Company by George H. Whitney, and said withdrawal request was executed by said J. Elro Brown.

That on or about November 19, 1948, affiant called upon Charles K. Hackler, Acting Regional Director of the Twenty-First Region, who, in the presence of affiant and Daniel Harrington, attorney, National Labor Relations Board, Twenty-First Region, telephoned J. Elro Brown and inquired of him whether the differences between the Company and the Union had been settled and whether the withdrawal request was to apply to all charges and all operations. That Mr. Hackler, upon receiving affirmative responses then approved the request withdrawing said charge and stated to affiant that the National Labor Rela-

tions Board, Twenty-First Region, could then proceed with the processing of representation petitions theretofore filed by said Company.

That because of a statement contained in Mr. Charles F. Armin's letter of May 17, 1949, to Mr. G. J. Bott, Associate General Counsel, National Labor Relations Board, to the effect that Mr. Robert R. Rissman had been separated from the case, affiant, on or about May 25, 1949, telephoned Robert R. Rissman at Michigan 9708, and asked Mr. Rissman whether it was true that he had withdrawn from the unfair labor practice charge filed against the Company. That Mr. Rissman stated to affiant that he had not been active in the case and had filed it at the request of said Union because Charles F. Armin, International Representative for the Union, was not available and that Mr. Armin had actually been handling the case from the beginning.

/s/ WALLACE E. AVERY

Subscribed and sworn to before me this 1st day of July, 1949.

[Seal] /s/ ADA L. COLEMAN,
Notary Public in and for the County of Los Angeles,
State of California.

My Commission expires Sept. 30, 1951.
Affidavits of Service by Mail attached.

[Stamped]: Received Oct. 24, 1949 NLRB.

United States of America
Before the National Labor Relations Board
Case No. 21-CA-295

In the Matter of

THE TEXAS COMPANY
and
ROBERT RISSMAN

Case No. 21-CA-375

In the Matter of

THE TEXAS COMPANY
and
GEORGE CODY

DECISION AND ORDER

On June 16, 1950, Trial Examiner William F. Scharnikow issued his Intermediate Report in this consolidated proceeding, finding that, in Case No. 21-CA-295, the Respondent had engaged in and was engaging in certain unfair labor practices in violation of Section 8 (a) (1) and (3) of the Act, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that, in Case No. 21-CA-375, the Respondent had not engaged in certain alleged unfair labor practices and recommended the dismissal of the complaint relating to that case in its entirety. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate

Report and supporting briefs. Statements in the nature of exceptions were also filed by the charging party in Case No. 21-CA-375, and by two employees of the Respondent, Nickerson and Miller.¹ The Respondent's request for oral argument is denied because the record and the briefs, in our opinion, adequately present the issues and positions of the parties.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.² The Board has considered the Intermediate Report, the briefs and exceptions, and the entire record in the case, and hereby adopts only those findings and conclusions of the Trial Examiner that are consistent with this Decision and Order.

¹These two employees contended that their names were inadvertently omitted from the amended complaint in Case No. 21-CA-295. As we are dismissing the complaint in that case, we find it unnecessary to pass upon this contention.

²We find no basis for the Respondent's contention that the charges in Case No. 21-CA-295 were filed by Rissman "fronting" for a noncomplying union. The asserted noncompliance of the Oil Workers Unions is based solely on the ground that the International was affiliated with the then noncomplying parent CIO, a fact which, in our opinion, does not impair the compliance status of the International. See *J. H. Rutter-Rex Manufacturing Co., Inc.*, 90 NLRB No. 15. In any event, the CIO is now in compliance and has been since 1949.

Case No. 21-CA-295

The issues before the Board in this case arise out of a strike which the Union³ called in September, 1948, for the purpose of enforcing wage demands, involving—so far as this case is concerned—three bargaining units of the Respondent's Pacific Coast Division.

The Trial Examiner found that, by the letter which the Respondent sent its striking employees on September 28 and by a number of related statements made by supervisors of the Respondent to a few strikers,⁴ the Respondent interfered with the rights of its employees to engage in concerted activities, in that it sought to undermine the authority of the statutory bargaining representative by dealing with the employees individually, in violation of Section 8 (a) (1). He further found that this conduct by the Respondent converted the economic strike into an unfair labor practice strike, and that, as a consequence, the Respondent's refusal to reinstate the strikers, on the ground that they had been permanently replaced by the time they requested reinstatement, discriminated against the strikers in violation of Section 8 (a) (3). For the reasons stated below, we do not agree that the Respondent's letter, or any other conduct by the Respondent during the strike, violated the Act.

³“Union” refers to Oil Workers International Union and its Locals 120 and 128, interchangeably.

⁴The 13 episodes which the Trial Examiner found violative are set forth in detail in the Intermediate Report.

The September 28 letter which was signed by Division Manager James T. Wood, Jr., and addressed, without consultation with the Union, to all of the strikers, except two who had been discharged, read as follows:

There is no indication at present when the strike called by the Oil Workers International Union (CIO) will end.

It has therefore been decided to resume normal Producing Department Operations in the Los Angeles Basin and Ventura Districts as promptly as possible.

Employees who return to work on or before October 4, 1948, will find jobs available for them. After October 4, 1948, full measure will be taken to fill all remaining vacancies from every available source. As to those employees who do not return to work on or before October 4, 1948, the Company will take whatever action may be deemed to be proper at the time.

You may have been told that if you come back to work before the strike is ended, the Union will compel the Company to discharge or otherwise discriminate against you. I assure you no employee returning to work before the strike is ended will be discriminated against or penalized now or in the future because of that fact.

If you want to return to work, you should communicate with your Foreman or Superintendent for instructions.

The Trial Examiner suggested that this letter was proper insofar as it advised the strikers that the Respondent intended to avail itself of its privilege under the Act to resume operations,⁵ and merely reported that strikers would not be replaced before October 4. However, he found that the letter illegally sought to induce the employees to return to work by threatening to condition the return to work after October 4 upon the loss of seniority.

We are, however, unable to read, either in the September 28 letter or in any later conduct by the Respondent, any threat that the strikers would lose their seniority unless they return to work by the date specified in the letter for the beginning of replacements. The letter speaks of "taking whatever action may be deemed to be proper at the time." No reference is made to seniority and we find no reason in the record to believe that by "proper" action, the Respondent contemplated, or could reasonably have been believed by the strikers to be contemplating, anything other than action which the statute permits.⁶ The oral statements later made by

⁵ *N.L.R.B. v. Mackay Radio & Telegraph Co.*, 304 U. S. 333.

⁶ In fact, the Respondent, in acting as it "deemed to be proper," hired no replacements until October 5, the day after the so-called deadline; promoted none of the nonstrikers or earlier returned strikers between September 28 and October 4; gave every striker who returned his old job unless it had been filled by the time he returned either by promotion or new employment; gave every replaced striker the job nearest to his old job; told strikers who applied after all available jobs had been filled that they

supervisors to individual employees were all in the same general vein as the September 28 letter and likewise contained no specific threats with regard to seniority or any other matter. It is true that the Respondent failed to clarify its policy with respect to relative seniority until sometime after the September 28 letter, but we find nothing in this fact which would warrant our reading a threat into the Respondent's earlier statements.⁷

would be given preferential consideration for employment in the first vacancies which occurred, for which they were qualified; restored all pension, past service, and other rights; and kept "permanent" replacements in their positions. Cf. *N.L.R.B. v. Mackay Radio & Telegraph Co.*, *supra*.

⁷ In reaching a contrary conclusion, the Trial Examiner relies upon Superintendent Loomis' statement that seniority status for strikers was undecided at the time of the October 8 conference, the intramanagement memorandum of October 6 which stated that the applicability of "former" seniority to "promotions, demotions, and lay-offs" was to be deferred, and the intramanagement memorandum of November 17 advising the superintendents not to discriminate in considering the applications of any "former employees," i.e., the replaced strikers. "Former seniority" was a composite of five separate, different, and distinct types of seniority recognized in the contracts: Length of service with the Company, operations seniority, district seniority, and seniority credit "spiked" on June 16, 1938, collectively described by the General Counsel and the Trial Examiner as "accumulated" seniority.

Unlike the Trial Examiner, we find that the Respondent's difficulty in determining the relative status of returning strikers and nonstrikers, earlier returning strikers, and replacements was warranted by the complexity of the problem.

Absent a threat or a promise of benefit designed to coerce the strikers into returning by the deadline date, the legality of the Respondent's individual solicitation of the strikers must be determined against the background in which such solicitation was done.⁸ For, although the Board has, in the past, found individual solicitation of strikers violative of the Act, in all such cases one or both of the following two factors has been present: (1) The solicitation has constituted an integral part of a pattern of illegal opposition to the purposes of the Act as evidenced by the Respondent's entire course of conduct,⁹ or (2) the solicitation has been conducted under circumstances, and in a manner, reasonably calculated to undermine the strikers' collective bargaining representative and to demonstrate that the Respondent sought individual rather than collective bargaining.¹⁰

⁸United Welding Company, 72 NLRB 954; see *N.L.R.B. v The Sands Manufacturing Company*, 306 U.S. 332, 342, and *Colgate Manufacturing Corporation*, 85 NLRB 864. Cf. *The Cincinnati Steel Castings Company*, 86 NLRB 592, and *Kansas Milling Company*, 86 NLRB 925, (reversed and remanded in 185 F. 2d 413 (C. A. 10), where there was coercion inherent in the solicitation itself.

⁹*Cathey Lumber Company*, 86 NLRB 157, enfd., 165 F. 2d 1021 (C.A.5) where the Board also found a refusal to bargain, a refusal to reinstate strikers although vacancies existed, and independent coercive statements; see *The W. T. Rawleigh Company*, 90 NLRB No. 271; *The Cincinnati Steel Castings Company*, *supra*; *Kansas Milling Company*, *supra*.

¹⁰In *Sam'l Bingham's Son Mfg. Co.*, 80 NLRB 1612, the Board noted that Bingham told the solicited pickets "that he would not invite a conference with

Neither factor is present here.

The record before us contains no evidence of any other unfair labor practices, indicative of an anti-union animus on the part of the Respondent, now¹¹ or in the past.¹² It is clear, as the Trial Examiner found, that the Respondent's decision to resume operations was motivated by bona fide business considerations.¹³ It sought to implement this decision by an individual appeal to the strikers which, as we have found, contained no threat or promise of benefit. And there is no basis in the record for inferring that by resorting to the individual sollicita-

the Union 'until Hell freezes over''; see *Hart Cotton Mills, Inc.*, 91 NLRB No. 130; cf. *J. I. Case v. N.L.R.B.*, 321 U.S. 332; *Medo Photo Supply Corp. v. N.L.R.B.*, 321 U.S. 678.

¹¹ It is true in Case No 21-CA-375 we are finding, below, that the Respondent violated the Act in refusing to reemploy Cody. However, as stated there, the circumstances surrounding that unfair labor practice are of a special and unusual character, which, standing alone, we do not consider as indicative of general union animus on the part of the Respondent.

¹² The Union and the Respondent first entered contractual relations in the Gasoline Operations in 1938, in the L.A. Producing Operations in 1941, and in the Ventura Operations in 1947. At all times after these respective dates the Union and the Respondent had contractual relations with one another. There had been no earlier unfair labor practices charged.

¹³ After a month of the strike, the Respondent was suffering from drainage of oil from its idle properties by adjoining producers who were operating and had been threatened with lawsuits by lessors if such drainage were permitted to continue because of non-operation.

tion the Respondent was seeking to undermine the representative status of the Union. On the contrary, at no point did the Respondent disparage the Union; there is no contention that the Respondent did not bargain in good faith during its meetings with the Union, some of which took place during the strike;¹⁴ and the likelihood that the individual solicitation of the strikers would demonstrate a propensity to resort to individual rather than collective bargaining is greatly diminished by the fact that the Respondent had earlier made abundantly clear its intention of continuing to recognize and deal with the Union.¹⁵

¹⁴ Such meetings were held on April 8, June 7, June 10, October 25, and October 27. The Union ended negotiations on June 7 and did not renew its request for negotiations until October 22.

¹⁵ Thus, on September 9, 1948, an advertisement signed by the six major struck oil companies — Standard, Tidewater, Shell, Richfield, Union, and the Respondent—was published in the Los Angeles Times under the heading “Who Wants an Oil Strike.” The advertisement stated that it was in the public interest to keep the refineries operating and that the companies, the public, and many employees did not want the strike. It further stated that the companies were at all times ready to meet with the Union “at any time.” On September 23, the Respondent mailed a letter to all employees who were striking stating its position on its offer of 12½ cents per hour wage increase, which the Union had accepted elsewhere, and certain other matters including the clarification of certain current rumors. This letter recognized and reaffirmed the bargaining relationship.

In addition, although the contracts had expired by their terms on May 15, May 25, and August 20, 1948, respectively, the Respondent continued to operate its

Under the particular circumstances here disclosed, we are unanimously of the opinion that the Respondent took no action which the employees might reasonably interpret as a disparagement of the collective bargaining process or which amounted to a withdrawal of recognition of the Union's representative status or to an undermining of its authority.¹⁶ As the Board observed in comparable circumstances, "to penalize this employer for proffering the jobs once again to economic strikers on the same terms to be offered replacements, would penalize open dealing and invite silent displacement of striking employees, a result which seems to us more likely to be productive rather than preventive of industrial strife and thus not to effectuate the purposes of the Act."¹⁷ Accordingly, we conclude that the Respondent engaged in no conduct during the strike of September, 1948, which converted that economic strike to an unfair labor practice strike.¹⁸

business under the terms of the contracts and checked off union dues until the outbreak of the strike.

¹⁶ The Board thus summarized the criteria for finding interference with the right to engage in collective bargaining in *Central Metallic Casket Co.*, 91 NLRB No. 88.

¹⁷ *Times Publishing Company*, 72 NLRB 676, 684; see also *United Welding Company*, *supra*, and *Roanoke Public Warehouse*, 72 NLRB 1281, 1283.

¹⁸ It is, therefore, unnecessary for us to pass upon the Respondent's contention that, in any event, the conduct found violative by the Trial Examiner was not such as would, under the circumstances, convert the strike into an unfair labor practice strike.

Thus the strike remained economic in nature, and as the record establishes that the Respondent refused to reinstate the strikers on the sole ground that they had been permanently replaced, we find that such refusal did not violate Section 8 (a) (3) or 8 (a) (1) of the Act.

We are satisfied that the replacements were assured that if they desired, their jobs might be permanent,¹⁹ and we therefore do not regard it as material that under the then existing contract provisions employees could not acquire "permanent" status until after 120 days of employment. Like the Trial Examiner, and for the reasons stated in the Intermediate Report, we find no merit in the General Counsel's contention that the Respondent discriminated against the replaced strikers by filling some later vacancies by making interdivisional transfers rather than by recalling the strikers.²⁰ Finally, we are satisfied that the record discloses no instance in which returning strikers were discriminated against because of their strike activity in regard to seniority²¹

¹⁹ The only strikers who returned before all available jobs were filled who were not employed were those who conditioned their request upon the reinstatement of more strikers than there were jobs available (see *Oklahoma Rendering Company*, 75 NLRB 1112), or who refused proffers of the available jobs.

²⁰ Cf. *The Firth Carpet Company v. N.L.R.B.*, 129 F. 2d 633, 636 (C.A. 2), enfg. 33 NLRB 191, where transfers were found to be "makeshift" because no new individuals were hired as initial replacements.

²¹ In reaching this conclusion, we do not, however, adopt the Trial Examiner's apparent assumption that the right of the strikers not to be discriminated

or any other term or condition of employment.

Accordingly, the Board unanimously dismisses the complaint relating to Case No. 21-CA-295 in its entirety.²²

Case No. 21-CA-375

The issues in this case arise out of the following facts: George Cody, who after working for the Respondent for 20 years had been recently promoted to supervisor, was discharged on September 28, 1948, for refusing, because of his past participation in union activities, to perform rank-and-file production work assigned him during the strike. Immediately upon his discharge, Cody reinstated his union mem-

against with respect to seniority depended upon whether the contracts containing the seniority provisions continued in existence after the strike. See *General Electric Company*, 80 NLRB 510. Accordingly, we find it unnecessary to pass upon, and do not adopt, the Trial Examiner's conclusion that the contracts which had expired by their terms were unilaterally extended for more than 60 days thereafter, because of the Respondent's failure to give the notice required under Section 8 (d) of the Act.

²² As we are dismissing the complaint relating to Case No. 21-CA-295 in its entirety, we find it unnecessary to adopt, or pass upon, the Trial Examiner's reasons for finding no policy bar to this proceeding because of (1) the strike settlement agreement between the Oil Workers International and the Respondent, (2) the withdrawal "with prejudice" by the Oil Workers of that portion of the charges in Case No. 21-CA-239, relating to the Respondent's Pacific Division and including allegations arising out of the 1948 strike, or (3) the Acting Regional Director's approval of this request for withdrawal of the charge.

bership and actively participated in the strike campaign and picketing. From November 4, when the strike was settled in his department, to November 15, Cody applied for reinstatement as a supervisor. On November 8, Dreyer, the superintendent who had discharged him, asked him if he would accept a job which required him to cross remaining picket lines. Cody said he had refused to do that on the 28th and would again. Dreyer then told Cody that his decision, too, was the same as it had been on the 28th. On November 15, O'Connor, the manager of the refining department and Dreyer's superior, asked Cody whether he really wanted to work for the Company, suggesting that maybe Cody should make his career in organized labor.

On November 16, Cody apologized to Dreyer for the mistakes he had made when a foreman and asked for his job or any job. Dreyer delayed decision, and on the 19th told Cody that his decision was still the same as it had been on September 28 and wished Cody luck in finding another job. Thereafter, Cody reapplied, but was only told by Dreyer that Dreyer's reason for refusing to hire him had been fully discussed. O'Connor who had left the matter to Dreyer, indicated dissatisfaction with Dreyer's approach, but did nothing to secure Cody a job. It is clear, and we find, that on and after November 16, Cody requested employment in a rank-and-file job and the Respondent recognized the request as such.

The Trial Examiner found that the Respondent did not violate Section 8 (a) (3) of the Act by refusing to hire Cody as a rank-and-file employee for

the sole reason that he had been discharged as a supervisor for refusing to do production work during the strike, because the refusal to hire, being based "neither upon the membership of the former supervisor in a union nor any protected activities on his part," did not discharge membership in the striking union. A majority of the Board does not agree with this conclusion.²³

Like the General Counsel, we believe that the Trial Examiner has misconceived the effect of the 1947 amendments which removed supervisors from the protection which the Act accords to "employees."²⁴ As we read these amendments, they were not intended to change the character of union or other concerted activity engaged in by supervisors. Concerned with the problem of divided loyalties, Congress, in these amendments absolved from liability under the Act

²³ Members Reynolds and Murdock dissent from this portion of the decision (in Case 21-CA-375), for the reasons set forth in their separate opinion attached hereto.

²⁴ The relevant amendments are contained in Section 2 (3), which provides that the term "employee" shall include "any employee, and shall not be limited to the employees of any particular employer . . . but shall not include . . . any individual employed as a supervisor . . ."; Section 2 (11) which defines "supervisor"; Section 14 (a) which provides "(a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining."

employers who discharge or otherwise discriminate against supervisors for such activity, or who refuse to recognize the collective bargaining representatives of supervisors.²⁵ But to say that such activities are no longer accorded affirmative protection, is not to say that they are also tainted with illegality. The refusal by Cody as a supervisor to perform rank-and-file work of strikers was concerted activity of a type which was protected under the Wagner Act.²⁶ The

²⁵ See *N.L.R.B. v. Edward G. Budd Manufacturing Company*, 169 F. 2d 571 (C.A. 6).

²⁶ The Board and the Courts consistently held that Section 2 (3) of that earlier Act, protecting "any employee," included "supervisors" as "employees." See *Packard Motor Car Co. v. N.L.R.B.*, 330 U.S. 485, 493, citing with approval *Soss Manufacturing Company*, 56 NLRB 348. The latter case noted that the rights under the Act of supervisors to protection in their organization activities were qualified by the need of the employer to maintain his neutrality toward the organizational activities of other employees. As an "employee" a supervisor was protected in (1) joining a rank-and-file union (*Golden Turkey Mining Company*, 34 NLRB 760, 776-779; *Freuhauf Trailer Company*, 1 NLRB 68, 76, enfd. 301 U.S. 49, 55); (2) joining in a rank-and-file strike on behalf of the rank-and-file union to which he belonged (*Mackay Radio & Telegraph Company*, 1 NLRB 201, 222-225, enfd. 304 U.S. 333, 346-347); (3) joining with other members of a foremans' union to assure rank-and-file strikers that the foremen, belonging to another union, would not take their jobs (*American Steel Foundries v. N.L.R.B.*, 158 F. 2d 896 (C.A. 7), enfg. 67 NLRB 27; 68 NLRB 514; (4) joining other foreman in a strike, primarily for their mutual aid, against performing rank-and-file work during a rank-and-file strike (*E.A. Laboratories, Inc.*, 87 NLRB 233); and

first clause of Section 1 (a) of the 1947 amendments made it crystal clear that Congress did not convert this conduct into activity akin to picket line violence, wilful destruction of the Respondent's property, a sitdown strike — conduct which would be “unprotected concerted activity” constituting “cause” for the discharge of any employee. Although the amendments privilege the present discharge, they did not redefine the nature of the activity.

When Cody applied for employment in a non-supervisory job on November 16, 1948, he was no longer “employed as a supervisor” and was then within the protection of the Act. He stood in the position of an “employee,” whether or not he had ever worked for the Respondent²⁷ and the only form of “unprotected” concerted activity which could privilege the Respondent's refusal to hire him was such as would justify the refusal to reinstate any “employee.”²⁸ The Respondent gave as its only reason for refusing to hire Cody the fact that he had been

(5) assisting a rank-and-file strike by refusing to perform struck work, whether or not a member of the striking union (Pinaud, Incorporated, 51 NLRB 235).

²⁷ See *Phelps Dodge Corp. v. N.L.R.B.*, 313 U.S. 177; *Briggs Manufacturing Company*, 75 NLRB 569; *John Hancock Mutual Life Insurance Company*, 92 NLRB No. 27.

²⁸ This rule is consistent with the Board's holding in *United Elastic Corporation*, 84 NLRB 768, relied upon by the Respondent. In that case, the Board held that “unprotected concerted activity” by employees justified the employer in discharging and refusing to reinstate those involved.

discharged “for cause” as a supervisor, but the “cause” which led to Cody’s discharge was concerted activity which, had Cody been an “employee,” would have rendered the refusal to employ him unlawful.²⁹ Thus, to say that the refusal to hire Cody was based on unprotected concerted activity ignores completely the special character of the limitations on union activity by supervisors, and the fact that even such limitations were inapplicable to Cody when he applied for employment.

Moreover, unlike our dissenting colleagues, we do not regard as controlling the fact that in refusing Cody employment the Respondent may not have been motivated by a specific purpose to interfere with and discourage rank-and-file union activity. The situation before us is not unlike those cases in which employees join sympathetically in protected concerted activity initiated by a union in which they are not, and perhaps even could not become, members. This Board and the Courts have held³⁰ that reprisal against such employees necessarily discourages not only their participation in concerted activities, but also active union membership on the part of the employees on whose behalf they acted. So here, we think that membership in the rank-and-file union was pal-

²⁹ Even though the refusal to do the work assigned might have privileged the company permanently to replace him. See *Gardner-Denver Company*, 58 NLRB 81.

³⁰ E.g. *N.L.R.B. v. Biles Coleman Lumber Co.*, 98 F. 2d 18 (C.A. 9); see *American Steel Foundries v. N.L.R.B.*, 158 F. 2d 896 (C.A. 7).

pably discouraged when Cody, entitled to the protection of the Act, was refused employment solely because he had, in the past, made common cause, in a manner which was not unlawful, with protected concerted activity by the rank-and-file union. And in reaching that conclusion we, unlike our dissenting colleagues, see no conflict with the decision of the Board in the *Panderia* case.³¹ In that case the alleged discriminatee was discharged for having engaged in conduct on his own in aid of agricultural laborers who, like supervisors, are excluded from the protection of the Act. The Board found no "concerted activity" protected by the Act, and rejected the contention that such a discharge was violative of the Act because it may have had the incidental effect of discouraging union or other concerted activity by the nonagricultural employees protected by the Act. But the discharge in that case was one which was clearly aimed at the activities of agricultural employees, and of the single nonagricultural employee who joined with them. The effect it may have had upon the activities of nonagricultural employees was, in those circumstances, regarded as "incidental."³² In the present case, however, the conduct upon which

³¹ *Panderia Sucesion Alonso et al.*, 87 NLRB 877. (Chairman Herzog and Member Houston dissented on this point.)

³² Although agreeing with the distinction between the instant case and the *Panderia* case stated above, and in therefore concluding that *Panderia* is not controlling here, Member Styles, who did not participate in that case, does not thereby wish to be deemed as having passed on the issues in that case.

the Respondent's refusal to hire Cody was ultimately based was his activity in aid—not of other supervisors—but of the very rank-and-file employees whose number he was later prevented from joining by that refusal. To conclude that this did not discourage activity by the rank-and-file employees would totally ignore the realities of the situation.

In sum, we do not believe that Congress intended the employer's privilege to discriminate against supervisors for what would otherwise be protected concerted activity likewise to privilege an employer to refuse to hire an individual for a rank-and-file job, because of his former concerted activity as a supervisor.³³ On the evidence before us, we are satisfied that the refusal to hire Cody was predicated on his concerted activity in the interest of the rank-and-file strike. Such a refusal necessarily discouraged membership in, and concerted activity on behalf of, the labor organization involved, not only by Cody but by all his fellow employees, thereby violating Section 8 (a) (3) and 8 (a) (1) of the Act.

³³ Clearly, the Board may not order the employer to employ an applicant who is rejected "on account of some permissible criterion." *N.L.R.B. v. Waumbec Mills*, 114 F. 2d 226, 234 (C.A. 1). Thus, the Board has recognized that an employer may promulgate a nondiscriminatory rule against "down grading" and thereby justify refusing rank-and-file employment to a former supervisor discharged for continuing union membership. *Lily-Tulip Cup Corporation*, 88 NLRB No. 170. In the present case, however, the Respondent made a practice of down grading to their former positions those who were unsatisfactory as supervisors.

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act, we shall order the Respondent to offer Cody immediate employment as a rank-and-file employee in its pipe line division of the refining department, Pacific Coast Division, Los Angeles, California, with back pay from the date, after November 16, 1948, when the Respondent first employed any individual in any job for which Cody was qualified to the date on which the Intermediate Report issued and from the date on which this Decision and Order issues to the date of its offer to Cody. We shall order that the loss of pay be computed on the basis of each separate calendar quarter or portion thereof during the period from the Respondent's discriminatory action to the date of a proper offer of employment. The quarterly periods, hereinafter called "quarters," shall begin with the first day of January, April, July, and October. Loss of pay shall be determined by deducting from a sum equal to that which the employee would normally have earned for each quarter or portion thereof, less his net earnings,³⁴ if any, in other employ-

³⁴ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere, which would not have been incurred but for this unlawfull discrimination and the consequent necessity of his seeking employment elsewhere. *Crossett Lumber Company*, 8 NLRB 440. Monies received for work performed upon Federal, State, county, municipal or other work-relief projects shall be considered earnings. *Republic Steel Corporation, v. N.L.R.B.*, 311 U.S. C.

ment during that period. Earnings in one particular quarter shall have no effect upon the back-pay liability for any other quarter.

We shall also order the Respondent to make available to the Board upon request payroll and other records to facilitate the checking of the amount of back pay due.³⁵

The Board ordinarily regards a violation of Section 8 (a) (3) of the Act as sufficiently indicative of a propensity to commit other unfair labor practices to warrant an order to cease and desist from in any manner interfering with the rights of employees under the Act. In this particular case, however, because of the novel circumstances involved we do not find that the Respondent's conduct demonstrates a general opposition to the purposes and policies of the Act. Accordingly we shall confine the cease and desist provisions of our order to the specific conduct found and any like or related conduct.

ORDER

Upon the entire record of the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, The Texas Company, its agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discriminating with regard to the hire and tenure of employment of George Cody.

³⁵ F. W. Woolworth Company, 90 NLRB No. 41.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organization, to join or assist Oil Workers International Union, affiliated with the Congress of Industrial Organizations, or Locals 120 or 128 thereof, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act, and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer George Cody immediate employment as an employee in its pipe line division of the refining department, Pacific Coast Division, Los Angeles, California.

(b) Make whole George Cody in the manner set forth in the section entitled "The Remedy," for any loss of pay he may have suffered by reason of the Respondent's discrimination against him.

(c) Upon request, make available to the Board or its agents, for examination and copying, all pay-

roll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amounts of back pay due and the right of employment under the terms of this Order.

(d) Post at its office for the pipe line division of the refining department, Pacific Coast Division, Los Angeles, California, copies of the notice attached hereto.³⁶ Copies of said notice shall be furnished to the Respondent by the Regional Director for the Twenty-first Region, and shall, after being duly signed by a representative of said Respondent, be posted by it immediately upon receipt thereof, and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the said Respondent to insure that said notice is not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

It Is Further Ordered that the complaint be and

³⁶ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

it hereby is dismissed insofar as it alleges violations charged in Case No. 21-CA-295.

Signed at Washington, D. C., April 16, 1951.

PAUL M. HERZOG,

Chairman

JOHN M. HOUSTON,

Member

JAMES J. REYNOLDS, JR.,

Member

ABE MURDOCK,

Member

PAUL L. STYLES,

Member

[Seal]

NATIONAL LABOR RELATIONS
BOARD.

Members James J. Reynolds, Jr., and Abe Murdock, dissenting in part only:

We do not agree with the majority in Case 21-CA-375 that the Respondent's refusal to hire Cody as a rank-and-file employee constituted unlawful discrimination, within the meaning of the Act.

Admittedly, Cody was discharged as a supervisor for his insubordinate conduct in refusing to do production work during the strike of the nonsupervisory employees, and later was denied employment as a rank-and-file employee for the same reason. The Board is unanimous in holding that because Cody was a supervisor his concerted activity was not protected by the present Act³⁶ and therefore his discharge was

³⁶ In our opinion, it is immaterial whether Cody's conduct as a supervisor in making common cause

not unlawful. We also agree with the majority that nevertheless when Cody thereafter sought employment with the Respondent in a nonsupervisory position, he stood in the position of an "employee" and was therefore entitled to the full protection of the Act, just like any other applicant. But, unlike the majority, we are unable to find that the Respondent's treatment of Cody as an applicant was violative of the Act.

For the purpose of defining the correlative rights and obligations of the parties herein, we see no materiality to the distinction which the majority seeks to draw between unprotected supervisory activity under the present Act and the other types of activity previously found unprotected under the Wagner Act, for, the basic issue in cases of this kind is, and always has been, whether the employer interfered with employee concerted activity which Congress immunized against reprisal. Under the Act the Respondent was privileged to refuse to reemploy Cody in a nonsupervisory position for any reason whatsoever, provided only that it was not motivated by a purpose to interfere with and discourage rank-and-file activity.³⁷ As the Trial Examiner found and the majority apparently concedes, there is no evidence that the Respondent was so unlawfully motivated in refusing to reemploy Cody. Indeed, it is clear, as the majority finds, that the Respondent's reprisal action was based solely on Cody's unprotected and

with nonsupervisory employees would have been protected concerted activity under the Wagner Act, as found by the majority.

³⁷ *Pepsi-Cola Bottling Co.*, 72 NLRB 601.

insubordinate conduct as a supervisor and not on any actual or anticipated activity by him as an employee on behalf of the Union. Consequently, we are satisfied that the denial of employment to Cody was not violative of the Respondent's obligation not to discriminate or of Cody's right as an employee to engage in concerted activity.

In the circumstances of this case, we are unable to accept the majority's basic conclusion that because the refusal to rehire Cody, for his unprotected activity as a supervisor, "necessarily discouraged" rank-and-file concerted activity and membership, the respondent thereby violated the Act. A somewhat similar legal argument was rejected in *Panaderia Sucesion*,³⁸ where a majority of the Board stated:

The fact that the discharge [of the complainant] may have had the incidental effect of discouraging [employee concerted activity] does not cause the Respondents' essentially privileged conduct to assume the character of an unfair labor practice. Whenever an unfair labor practice is filed with the Board based upon an employer's discharge of active union members, it can be argued that such discharges restrain and discourage other employees from engaging in union activity. Nevertheless, if the Board finds that such employees were discharged because they had engaged in activities unprotected by the Act or were discharged for cause, the Board invariably refuses to find that the employer committed an unfair labor

³⁸ 87 NLRB 877.

practice, notwithstanding the incidental effect upon other employees.

In our opinion, the reprisal actions against Cody as a supervisor and as an applicant both sprang from the same unprotected supervisory activity; they had the same incidental discouraging impact on rank-and-file union activity and therefore should be measured by the same standard of liability. Since the discharge of Cody was admittedly privileged notwithstanding any discouraging effect on rank-and-file concerted activity,³⁹ we are satisfied that the respondent was privileged in its effort to discourage supervisory concerted activity to penalize Cody for his unprotected insubordination as foreman by denying him nonsupervisory employment.

Accordingly, we would also dismiss the complaint as to Cody.

Signed at Washington, D. C.

JAMES J. REYNOLDS, JR.,
Member

ABE MURDOCK,
Member

NATIONAL LABOR
RELATIONS BOARD

³⁹In removing supervisors from the protection of the Act, Congress recognized that rank-and-file concerted activity might thereby be incidentally discouraged.

Notice to All Employees Pursuant to
A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will offer to George Cody immediate employment as an employee, and make him whole for any loss of pay suffered as a result of the discrimination against him.

We will not in any like or related manner interfere with, restrain or coerce, our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Oil Workers International Union, affiliated with the Congress of Industrial Organizations or Locals 120 or 128 thereof, or any other labor organization to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act, or to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

Dated

THE TEXAS COMPANY

(Employer)

By

(Representative)

(Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Cases Nos. 21-CA-295 - 21-CA-375.]

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Statement of the Case

Upon a second amended charge filed in Case No. 21-CA-295 by Robert Rissman on February 3, 1949, on behalf of 50 individuals claiming to be employees of The Texas Company (herein called the Respondent),¹ and upon a first amended charge filed in Case No. 21-CA-375 by George Cody on March 17, 1949,² the Regional Director for the Twenty-first Region (Los Angeles, California), acting for the General Counsel of the National Labor Relations Board,³ on April 13, 1949, issued an order consolidating the two cases, a notice of hearing, and a consolidated complaint against the Respondent, alleging that the Respondent had engaged in, and was engaging in, unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2

¹ The original charge in Case No. 21-CA-295, was filed on December 9, 1948, and served upon the Respondent on December 13, 1948. The second amended charge was served upon the Respondent on February 7, 1949.

² The original charge in Case No. 21-CA-375, was filed on February 18, 1949, and served upon the Respondent on February 23, 1949. The first amended charge was served upon the Respondent on March 21, 1949.

³ The General Counsel and the staff-attorneys appearing for him at the hearing are herein referred to as the General Counsel; the National Labor Relations Board is referred to as the Board.

(6) and (7) of the National Labor Relations Act,⁴ herein called the Act. Copies of the consolidated complaint, the basic charges and the notice of hearing were duly served upon the Respondent and the charging parties.

On October 18, 1949, the Regional Director, pursuant to Section 203.15 of the Board's Rules and Regulations, Series 5 as amended, issued an amended consolidated complaint alleging that the Respondent had engaged in, and was engaging in, unfair labor practices within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the Act. Copies of the amended consolidated complaint, an order of the Regional Director resetting the hearing date, and a notice of further adjournment of the hearing, were served upon the Respondent and the charging parties.⁵

With respect to the unfair labor practices, the consolidated amended complaint, alleges in substance: (1) that a substantial number of the Respondent's employees went on strike; (2) that on or about October 6, 1948, and thereafter, the claimants, who were striking employees and whose names are set forth in Appendices A, B and C uncondition-

⁴ 61 Stat. 136.

⁵ At the hearing, counsel for the Respondent waived objection to the hearing being held less than 10 days after the amendment of the consolidated complaint upon condition that a 2-day recess be granted to him at the close of the General Counsel's case. The hearing proceeded and the requested recess was given.

ally offered to return to work and abandon the strike but the Respondent refused to reinstate them because of their activities in support of the strike; (3) that the Respondent interfered with, restrained, and coerced its employees by soliciting and urging them to abandon the strike, and conditioning their return on the loss of their accumulated seniority; (4) that by these activities the strike was prolonged and converted from an economic strike into an unfair labor practice strike; (5) that on or about November 16, and thereafter, George Cody, was on his application, refused employment by the Respondent because of his concerted activities on behalf of the Oil Workers International Union, affiliated with the Congress of Industrial Organizations, hereinafter called the Oil Workers.

In its answer to the amended consolidated complaint, the Respondent denied that it had interfered with, restrained, or coerced its employees or discriminated against them in regard to hire, tenure, or conditions of employment. It alleged that George Cody, then a supervisor, was discharged for cause on September 28, 1948, and for that reason was subsequently refused reemployment. It further alleged that the matters in dispute were settled by agreement with the Oil Workers, and that the matters charged in the present cases were the same as were contained in a charge previously filed by the Oil Workers which was withdrawn on November 19, 1948, "with prejudice" and with the approval of the Board's Acting Regional Director.

Pursuant to notice, a hearing was held in Los An-

geles, California, on various dates from October 26, 1949, to November 23, 1949, inclusive, before the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel and the Respondent participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues.

At the beginning of the hearing, the undersigned granted an unopposed motion by the General Counsel further to amend the consolidated complaint to correct the misspelling of the name of one of the claimants. Thereafter, the undersigned denied motions by the Respondent's counsel to dismiss the complaint because (1) the Oil Workers' settlement of the strike and withdrawal of its previous charges "with prejudice" and with the approval of the Acting Regional Director should, as a matter of policy and law, bar continuation of the present proceeding; and (2) George Cody was a supervisor and, therefore, not an employee within the meaning of the Act.

At the conclusion of the General Counsel's case, the undersigned denied (1) a motion by the General Counsel further to amend the complaint by adding allegations to the effect that the Respondent committed unfair labor practices within the meaning of Section 8 (a) (1) of the Act by refusing and failing to continue in full force and effect, after their expiration dates, the provisions of contracts covering employees of the Respondent and executed by the Respondent with Locals 120 and 128 of the Oil Workers; and (2) motions by the Respondent to dismiss

the complaint on the grounds previously urged and also upon the additional ground that the proof thus far submitted did not support the allegations of the complaint.

At the conclusion of the hearing, the Respondent moved for the dismissal of the complaint on the grounds previously urged. The undersigned reserved decision on this motion. It is now disposed of in accordance with the considerations hereinafter set forth. Both the General Counsel and the Respondent waived oral argument before the undersigned at the hearing.

On January 31, 1950, the undersigned received briefs both from the General Counsel and from counsel for the Respondent. Since then, by telegram dated May 15, 1950, counsel for the Respondent moved for a dismissal of the amended consolidated complaint so far as it is based upon the charge in Case No. 21-CA-295, on the ground that the evidence shows that the charge in that case "was filed under the auspices of, and appeals in connection therewith were filed by" the Oil Workers, a labor organization affiliated with the Congress of Industrial Organizations, which was not in compliance with Section 9 (h) of the Act at the time the complaint was issued. In support of the motion, the Respondent cites the recent decision of the Fifth Circuit Court of Appeals in *N. L. R. B. v. Postex Cotton Mills*, F. 2d. The General Counsel, in turn, filed his opposition to this motion. The undersigned believes that neither the decision cited nor its reasoning is applicable to the charges in the present case for the following reasons:

(1) the instant charges were filed by individuals and not by a labor organization; (2) they do not seek, and cannot result in, a bargaining order which would benefit a noncomplying labor organization; (3) whether a noncomplying labor organization prompted, assisted or effected their filing and processing is therefore immaterial, the problem being rather whether the evidence adduced at the hearing justifies a finding that the Respondent interfered with the rights of its employees, and an order protecting these rights and remedying the interference. The undersigned therefore denies the Respondent's motion.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. The Business of the Respondent

The Texas Company is a Delaware corporation with its headquarters in New York City. It is engaged in the production, manufacture, and distribution of petroleum products in various parts of the United States, including field and refining operations at and near Los Angeles and Ventura, California. During the year preceding the hearing, the Respondent produced and refined petroleum and petroleum products in its operations at and near Los Angeles and Ventura, of a value exceeding \$1,000,000. During the same year, more than 50 per cent of these products were transported by the Respondent, or

others on its behalf, to points outside the State of California. The undersigned finds that the Respondent has been engaged in, and is engaged in, operations at and near Los Angeles and Ventura, California, which affect commerce within the meaning of Section 2 (6) of the Act.

* * * * *

II. The Labor Organizations Involved

Oil Workers International Union and Locals 120 and 128 thereof, which are affiliated with the Congress of Industrial Organizations, are labor organizations within the meaning of Section 2 (5) of the Act.

IV. The Alleged Unfair Labor Practices in Case No. 21-CA-375

A. Introduction

George Cody was employed by the Respondent in the pipe-line department in the Los Angeles Basin District in various rank and file jobs from laborer to field gauger from April 6, 1928, until February, 1948, at which time he was promoted to become an assistant foreman. On September 28, 1948, during the fourth week of the strike, he was discharged. Failing in applications to secure reinstatement, he then applied for a rank and file job with the Respondent. The Respondent rejected this application.

It is undisputed that the Respondent's discharge of Cody as an assistant foreman was not a violation of the Act, since Cody was then a "supervisor" and not an "employee" within the meaning of the Act. The General Counsel contends, however, and the Respondent denies, that the Respondent's refusal

to hire Cody in a rank and file job on and after November 16, 1948, constituted discrimination in violation of Section 8 (a) (3) of the Act.

B. The Facts

Before and after his promotion to the assistant foremanship in February, 1948, Cody was recognized as a good, capable worker. He was also very active in the Oil Workers which he joined in 1934. In 1941 he took successive leaves of absence from his work for the Respondent for a continuous period of approximately 18 months to serve as an international representative of the Oil Workers. Sometime after his return to work for the Respondent, and for an unspecified period ending with his promotion to assistant foreman in February, 1948, he served Local 128 as the chairman of its Texas Company unit, participated in that Local's contract negotiations with the Respondent, was one of the signers for the Oil Workers of the resulting contracts in 1947, including the contract covering the refinery and pipeline employees, and handled grievances under that contract, first with Superintendent Dreyer and Assistant Superintendent Jones, and then, when necessary, also at higher levels. When he was promoted to become assistant foreman, Cody secured a withdrawal card from the Oil Workers at the request of Superintendent Dreyer.

Cody was on vacation from August 23 to September 12, 1948. Four or five days before he was to return to work, he telephoned Assistant Superintendent Jones and was told that there was a strike. Cody

laughed and said it looked as if he could have some more vacation. Jones told him, however, that he should come back to work on Monday, September 13, because the Respondent had a picket line pass for him from the Oil Workers to do maintenance, safety, and patrol work.

Cody, receiving his pass, patrolled the Respondent's lines and checked its pump stations, and made reports to Superintendent Dreyer from September 13 to September 28, inclusive. On several occasions he noticed that oil was being pumped through the lines and on one occasion he asked Letson, the foreman, what was going on but Letson said he did not know.

On Thursday, September 21, according to Cody's testimony, Chief Dispatcher Evans, referring to papers which he held in his hand, told Cody "that these strappings⁵³ [have] to be delivered" to the office, and Cody answered that Evans "could depend that [Cody] wasn't going to take them for him." On the following day, Evans told Cody that certain run tickets had to be delivered to the office and placed them on Cody's desk. Cody, however, left them on his desk and started on his patrol. When he returned they

⁵³ A strapping is a table, specially prepared for each of the oil tanks, for converting into barrels the linear measurement of the difference between high and low gauges shown on a run ticket. Run tickets are reports which are ordinarily made out by gaugers and which show the temperature and the high and low gauges on a change in level of a tank, e.g., on a shipment from a tank. Both run tickets and strapings are normally delivered to the office.

were gone. In his testimony Cody gave no reason for not delivering the run tickets but said that he had refused to deliver the strappings on the preceding day "because the strappings that are sent out to the various companies . . . are to show on the run tickets as to how much oil was shipped from a tank. I wanted no part in the operation."

Cody was injured in an automobile accident on Thursday, September 23, and Assistant Superintendent Jones excused him from work from Saturday, September 25, through Tuesday, September 28. On Monday, however, Assistant Superintendent Jones telephoned Cody to return to work on Tuesday, September 28, and on that day Cody reported to Jones' office.

Jones thereupon told Cody "that the Respondent had changed their minds now," that they were going to start up operations and that in lengthened, overtime schedules, the men were to ride in pairs, with Huso, a junior engineer, as Cody's partner. Jones also told Cody that Cody was to gauge and sample three tanks at the Yorba Linda Pumping Station sometime before October 1, for a "first of the month report."⁵⁴ Cody objected to gauging and sampling,

⁵⁴ Jones gave no testimony concerning this conversation; the findings with respect thereto are based upon Cody's testimony. Although Cody testified on direct examination that Jones also told him "to get the [Yorba Linda Pumping] Station to run," he modified his testimony on cross-examination by saying that this statement was made to him, not by Jones, but by Superintendent Dreyer who later appeared and joined in the conversation.

because as he then told Jones, it was work normally done by nonsupervisory employees. He also reminded Jones of his long service on the Union's committees since 1933 and said that he had "an actual fear of what would happen to [his] family and [his] home because of [his] activities in the Union."

During this conversation between Jones and Cody, Superintendent Dreyer entered Jones' office. Jones told Dreyer that Cody "didn't see fit" to do the work assigned to him and asked what should be done about it. Cody repeated what he had told Jones and then, when Dreyer said he must perform his assignment, he asked Dreyer "if he couldn't call [his] partner and let him do the work." Dreyer answered that it would not be fair to do that, and that if Cody "couldn't do the work," they would have to discharge him. Cody then told Dreyer "he would have to give the order," whereupon Dreyer said that he wanted Cody to gauge and sample the Yorba Linda tanks and "get the station ready to run."⁵⁵ Cody refused, and was discharged.

On the same day, Cody secured the cancellation of his withdrawal card from the Oil Workers and addressed a meeting of the Respondent's striking employees. Thereafter, he made trips to other locals of the Oil Workers to secure strike contributions and spent most of the rest of his time at the office of

⁵⁵ The finding as to this particular statement by Dreyer is based upon Cody's testimony in spite of Dreyer's denial. Otherwise the findings as to this conversation are based upon the consistent testimony of Dreyer and Cody.

Local 128. He also addressed a meeting of striking employees of the Standard Oil Company. Since November 22, 1948, he has been employed "on and off" by Local 128.

Beginning with November 4, Cody made a series of attempts, first to regain his job as assistant foreman and then, on and after November 16, to secure employment with the Respondent in a rank-and-file job.

On November 4, Cody asked E. B. O'Connor, manager of the Respondent's Pipe-line Department in the Pacific Coast Division to be reinstated. He agreed with O'Connor that he had made a mistake as a foreman but said he did not understand why he could not return to work as had the rest of the employees. O'Connor said that, in view of the circumstances of his discharge, Cody had to make his peace with Superintendent Dreyer before he could be rehired and made an appointment for Cody to see Dreyer.

On November 8, Cody met Superintendent Dreyer at the pipe-line headquarters in the Los Angeles Refinery Works near Wilmington. Cody asked that he be returned to his job as a supervisor, stating that it had been difficult for him to decide not to do the work assigned to him and that, at O'Connor's suggestion, he had come to see Dreyer to "make amends." In the discussion, Dreyer asked whether Cody, if returned to a supervisor's job, would go through the picket lines at certain points on the Company's properties and those of the Richfield Oil Company and the Union Oil Company. Cody said that he thought it was awfully unfair to ask that of him and that

his answer was that he could not do it on September 28, and he still could not do it. Dreyer told Cody that he would consider Cody's request for reinstatement and would give Cody an answer within a week. On November 11, Dreyer called Cody on the telephone and told Cody that his decision was still the same as it was on September 28 and that he wished Cody much success in finding a job elsewhere.

On Monday, November 15, Cody told O'Connor of his visit to Dreyer and Dreyer's answer. O'Connor said that he thought, from a conversation he had with Dreyer, that perhaps Cody had been "a little bit too cocky," when he asked Dreyer for his job back. O'Connor also asked Cody whether he was sure he wanted to work for The Texas Company and upon Cody's affirmative answer, O'Connor said, "My reasons for asking that I think you have a lot to contribute to organized labor. Maybe you should make your career out of that." Cody said that a representative has no home life. O'Connor asked what Cody wanted him to do. Upon Cody's suggestion of his meeting with both O'Connor and Dreyer at the same time, O'Connor refused, stating that he thought Cody himself should make amends with Dreyer. Cody said he recognized O'Connor's position. O'Connor said in substance that he could order Dreyer to put Cody back to work but that he did not think that was the right thing to do—that he thought Cody should make amends with Dreyer. At Cody's request O'Connor made another appointment for Cody to see Dreyer on November 16.

On November 16, Cody again saw Superintendent

Dreyer and told him that, as a foreman, he had probably made some mistakes but that now he was asking for "any job." He also told Dreyer in substance that he thought it was an excessive penalty to discharge a man like him with such long service with the Company and referred to other cases in which employees had been merely demoted. Dreyer told Cody that he thought Cody's act "was a premeditated act, that if it had been something . . . done on the impulse of a moment, he might be able to excuse it." At the end of their conversation, Dreyer said that he would consider the matter and give Cody an answer later. On November 19, Dreyer telephoned Cody and told him that his decision was still the same as it was on September 28 and that he again wished Cody much success in finding employment elsewhere.

On receiving Dreyer's telephone call on November 19, Cody again appealed to O'Connor by telephone, stating that he was getting "double talk" from Dreyer and asked that O'Connor arrange to meet both Dreyer and Cody. O'Connor said he was not satisfied with Dreyer's answers to Cody and would telephone to Cody about the matter later on.

Not hearing from O'Connor, Cody wrote him a letter on December 16, 1948, and then visited him after January 1, 1949. O'Connor again told Cody to make amends with Dreyer and also suggested getting Cody a foreign job through the Respondent's refinery superintendent. But Cody said to hold that possibility in abeyance because he was going to do all he could to get a job in the pipe-line department.

On February 1 or February 2, 1949, Cody saw

Dreyer for the last time and was told by Dreyer in effect that the matter of Cody's application for work and Dreyer's reasons for refusal had been fully discussed and was ended.

C. CONCLUSIONS

The General Counsel argues that the Respondent's refusal on and after November 16 to hire Cody in a rank-and-file job was based upon his "excessive loyalty" to the Oil Workers; the Respondent argues that its refusal was based upon Cody's improper refusal as a supervisor to perform work assigned to him by the Respondent when he thought it adversely affected the interests of the Oil Workers and the strikers and his insistence at the same time that he be permitted to continue as a supervisor in the performance of other functions. Regardless of approach, the critical point of disagreement is whether the Respondent refused to hire Cody in a rank-and-file job in order "to discourage membership in a labor organization" (i.e., the Oil Workers), within the meaning of, and in violation of, Section 8 (a) (3), of the Act.

Although Cody was extremely active and prominent in the Oil Workers' activities both before his promotion to the assistant foremanship and after his discharge, the evidence does not persuade the undersigned that his membership in, and aggressive support of, the Oil Workers, or the prospect of his resuming these activities in a rank-and-file job, was the reason for the Respondent's refusal to permit Cody to return as a rank-and-file employee. There

was never any interference by the Respondent with these activities on Cody's part nor any indication that it was disturbed by his long and effective service for the Unions. On the contrary, the Respondent promoted him and made him a supervisor.

On the other hand, upon the evidence, it seems clear that the real reason for the Respondent's refusal to permit Cody to return to work as a rank-and-file employee was the same as the reason for which he was discharged as an assistant foreman; namely, that, as an assistant foreman, he had improperly refused to perform services because, in his opinion, they would help the Respondent and injure the chances of the strikers in the strike contest. In cases of this sort, supervisors, not being employees but representatives of the employer, may be expected by the employer to assist him in resisting the strike by continuing his business during and in spite of the strike. Thus, an employer's discharge of a supervisor because of a refusal by him to render this assistance (unless it be a refusal to participate in an unfair labor practice or to commit other unlawful acts), cannot be said to have as its objective or necessary result, the discouragement of membership in the striking union.

Nor can a subsequent refusal by the employer for the same reason, to hire the erstwhile supervisor as a rank-and-file employee be regarded as discouraging membership in a union. For it is based neither upon the membership of the former supervisor in a union nor any protected activities on his part on be-

half of the union in question. On the contrary, it rests solely upon his unprotected, prior refusal as a supervisor to align himself with his employer rather than with the striking employees, in the employer's legitimate contest of the strike.

The undersigned finds, therefore, that the Respondent, by refusing to reemploy George Cody as a rank-and-file employee did not discriminate with regard to his hire and tenure of employment, in order to discourage membership in a labor organization, in violation of Section 8 (a) (3) of the Act.

* * * * *

CONCLUSIONS OF LAW

5. The Respondent did not discriminatorily refuse to employ George Cody to discourage membership in a labor organization.

* * * * *

Affidavits and Return Receipts attached.

Before The National Labor Relations Board
Twenty-First Region

Case No. 21-CA-295

In the Matter of:

THE TEXAS COMPANY and ROBERT R.
RISSMAN

Case No. 21-CA-375

In the Matter of:

THE TEXAS COMPANY and GEORGE
CODY

Suite 607-613, Hearing Room 2

111 West Seventh St., Los Angeles, Calif.

Wednesday, October 26, 1949

Pursuant to notice, the above-entitled matter
came on for hearing at 10:30 a.m.

Before:

William F. Scharnikow, Trial Examiner.

Appearances:

Charles K. Hackler and Eugene M. Purver, 111
West Seventh St., Los Angeles, Calif., ap-
pearing for General Counsel.

J. A. McNair, Charles M. Brooks and Wallace
E. Avery, 929 South Broadway, Los An-
geles, Calif., appearing for the The Texas
Company. [1*]

* * * * *

PROCEEDINGS

Mr. Hackler: Mr. Examiner, I have had marked
by the official reporter for identification the follow-

* Page numbering appearing at foot of page of original certified
Reporter's Transcript.

ing formal documents, which constitute the pleadings in these cases:

* * * * *

General Counsel's Exhibit 1-E, which is the First Amended Charge filed by George Cody in Case No. 21-CA-375, being filed on the 17th day of March, 1949; [5]

* * * * *

General Counsel's Exhibit 1-FF, which is the First Amended Consolidated Complaint, dated October 18, 1949. On the reverse side of the last page of this Amended Consolidated Complaint there is endorsed a receipt indicating that a copy of it was received by counsel for Respondent on the 18th day of October, 1949.

* * * * *

General Counsel's Exhibit 1-HH, which is a verified Answer of the Respondent to the First Amended Consolidated Complaint, filed on October 24, 1949, and to which are attached three Affidavits of Service, indicating service by registered mail on Cody, Rissman, and Armin on the 24th of October, 1949;

General Counsel's Exhibit 1-II, which is a Motion to Dismiss the First Amended Consolidated Complaint, filed on October 24, 1949, and bearing attached affidavits showing registered mail service of a copy of such Motion to Dismiss on October 24th upon Armin, Cody, and Rissman.

The foregoing documents, which have been identified as General Counsel's Exhibits 1-A through 1-II, inclusive, are [12] herewith offered as the formal documents in the case.

Trial Examiner Scharnikow: Any objection?

Mr. Brooks: No objection.

Trial Examiner Scharnikow: General Counsel's Exhibits 1-A through 1-II are admitted in evidence.

(The documents heretofore marked General Counsel's Exhibits Nos. 1-A through 1-II for identification were received in evidence.) [13]

[Printer's Note: Exhibit No. 1-E is set out in full at page 1, Exhibit 1-FF at page 4, Exhibit 1-HH at page 9, 1-II at page 14 of this printed record.]

* * * * *

Mr. Hackler: I have had marked for identification General Counsel's Exhibit 13, what purports to be a typewritten copy of a strike settlement agreement under date of November 4, 1948, which purports to cover and affect the "Refining Department (Pacific Coast Division) of The Texas Company," the signatories on the copy being Mr. B. O'Connor, signing for "The Texas Company, Refining Department (Pacific Coast Division)", and bearing the signatures of E. Carl Mattern for the Oilworkers International Union and C. P. Myers on behalf of Long Beach Local No. 128. Can it be stipulated that General Counsel's Exhibit 13 is a true and correct copy of [53] the original strike settlement agreement entered into by the parties who appear signatories here on the date mentioned?

Mr. Brooks: So stipulated.

Mr. Hackler: In view of the stipulation, I offer General Counsel's Exhibit 13.

Mr. Brooks: No objection.

Trial Examiner Scharnikow: General Counsel's Exhibit 13 is admitted in evidence.

(The document heretofore marked as General Counsel's Exhibit 13 for identification was received in evidence.)

GENERAL COUNSEL'S EXHIBIT NO. 13

STRIKE SETTLEMENT AGREEMENT

This Agreement dated November 4th, 1948, outlines the basis of settlement of the strike called on September 4, 1948, by the Oil Workers International Union and its Locals 120 and 128 (hereinafter called "Union") against the Refining Department (Pacific Coast Division) of The Texas Company (hereinafter called Refining Department).

1. The Refining Department agrees that the rates of pay in effect at its Los Angeles Works and Los Angeles Terminal, its Fillmore Works, its Pipe Line Division and its Los Angeles Package Terminal as of September 3, 1948, shall be increased by twelve and one-half ($12\frac{1}{2}$) cents per hour for each hourly rate classification and that the monthly salaried rates in effect September 3, 1948, in the Los Angeles Works office, Los Angeles Package Terminal office and in the Pipe Line Division shall be increased Twenty-One and One-half Dollars (\$21.50) per month, said increases to become effective upon the date of execution of new Agreements between the Refining De-

partment and the Union referred to in paragraph 4 herein.

2. The Union agrees to terminate the current strike and will withdraw all pickets upon the execution of the new Agreements referred to in paragraph 4 herein.

3. The Refining Department agrees it will schedule its employes to return to work in the job classifications each occupied on September 3, 1948, such schedules to provide for return to work in an orderly manner consistent with good operations, and to permit all employes to be at work within 5 working days after the execution of the new Agreements referred to in paragraph 4 herein.

Any employe scheduled and notified to return to work and who does not return within fifteen (15) consecutive days after such notification, shall, unless there are extenuating and justifiable circumstances, be considered as having terminated his service with the Refining Department.

4. That new Agreements will be executed between the Refining Department and the Union covering—

- (a) Los Angeles Works and Los Angeles Terminal (Plant)
- (b) Los Angeles Package Terminal (Plant)
- (c) Los Angeles Package Terminal (Office)
- (d) Pipe Line Division
- (e) Fillmore Works.

and such Agreements shall become effective on date of execution.

5. The Refining Department will not prosecute the pending lawsuit heretofore filed against the Un-

ion or its members or institute any such new lawsuits for any alleged damage to the Refining Department or its employes arising out of the current strike and the Union will not prosecute its pending unfair labor practice charges or institute any new unfair labor practice charges against the Refining Department or its employes arising out of the current strike.

THE TEXAS COMPANY,
REFINING DEPARTMENT,
(Pacific Coast Division)

By /s/ B. O'CONNOR

OIL WORKERS INTERNATIONAL UNION, C.I.O.

By /s/ E. CARL MATTERN

LONG BEACH LOCAL NO. 128

By /s/ C. P. MYERS.

Trial Examiner Scharnikow: For my information, can you further stipulate as to which of the units of employees as listed General Counsel's Exhibit 13 covers?

Mr. Brooks: None.

Mr. Hackler: It covers none of the three units that we have covered in these contracts here. It covers several bargaining units in the refining department of the company, which I think will be more particularly set forth when Mr. Brooks argues his motion to dismiss.

Mr. Brooks: For further clarification, the only person involved in this proceeding, Mr. Examiner, who worked in the refining department prior to the date of the strike is Mr. Cody. [54]

* * * * *

Mr. Brooks: Of course, first, can it be stipulated that George Cody, named in Paragraph 7 of the Complaint, was a supervisor within the definition of the National Labor Relations Act, as amended, at the time of his discharge, as alleged in the [66] Respondent's Answer?

Mr. Hackler: So stipulated.

Trial Examiner Scharnikow: Was that discharge of Cody alleged in your Answer?

Mr. Brooks: Yes; Paragraph 7.

Mr. Hackler: That is in the Answer. The Complaint only alleges a refusal of employment to Cody.

Trial Examiner Scharnikow: All right, Mr. Brooks.

Mr. Brooks: Is that stipulation accepted?

Mr. Hackler: So stipulated.

Trial Examiner Scharnikow: The stipulation is accepted. [67]

* * * * *

Trial Examiner Scharnikow: Well, it was stipulated that Cody was a supervisor.

Mr. Hackler: At the time of his discharge, as alleged [97] in the Answer of the respondent.

Trial Examiner Scharnikow: Yes, but refused reinstatement.

Mr. Hackler: No. The theory of the Complaint, as it shows on its face, that he was refused new employment as a rank and file worker. The company's Answer sets up that, because he had previously been discharged as a foreman that justified a later refusal to hire him in as a rank and file on the Phelps Dodge theory. That is the real issue here.

Trial Examiner Scharnikow: Do you intend to offer proof that the application by Mr. Cody for this new employment was an application specifically for employment as a rank and file employee?

Mr. Hackler: Yes; the Complaint so alleges that he was refused employment.

Trial Examiner Scharnikow: Refused employment. I noticed that.

Mr. Hackler: As a rank and filer, and then by way of Answer it was set up that the reason he was and is refused employment, as I recall the Answer, is the fact that he had been previously discharged during the strike when he was a supervisor. [98] I think the facts will be, without going into the evidence,—I don't know whether the Answer goes that far—that he was discharged as a supervisor because he refused at the company's request to do struck work. In other words, he refused to do, from his standpoint, strike-breaking work.

Trial Examiner Scharnikow: Then, your theory in your intended proof will be the fact he made an application specifically for employment as a rank and file employee?

Mr. Hackler: That is right.

Trial Examiner Scharnikow: And that application was rejected.

Mr. Hackler: The refusal of that was an unfair labor practice. We make no contention that his discharge as a supervisor—that he had any remedies under the statute.

Trial Examiner Scharnikow: Or there was a failure to reinstate him as a supervisor.

Mr. Hackler: No, not alleged or relied upon. You will note Mr. Cody's charge is on the broader theory, that he was discriminated against as a supervisor. That is not the theory of the Complaint. [99]

* * * * *

Mr. Brooks: In the first place, as just has been mentioned, the Charge in the withdrawn case alleges that supervisors in The Texas Company have been discharged. What I have said with respect to the withdrawal of the Charge and other respects would apply in similar respects to that portion of the Complaint contained in Paragraph 7, but the principal position of ourselves regarding the reason that Paragraph 7 should be dismissed on the state of the record at the present time is this:

It is admitted that Cody was a supervisor. The Charge alleges that he was discharged. It makes no difference what reason prompted the discharge in the case of a supervisor. The Congress clearly excluded supervisory people from the coverage of the Act. It said that supervisors are a part of management; they are not employees for the purpose of this law. It is clear from the beginning of the court decisions on this statute and its predecessor that an employer may discharge an employee or a man working for him—I am using this in the broad sense—but an employer may discharge an employee for any reason whatsoever, so long as it doesn't violate the statute. Of course, we have contracts and an employer may not discharge an employee in violation of the contract unless, however, the statute prohibits an employer from discharging the man or a contract pro-

hibits a man from discharging an employee. He may discharge him for any reason, because he is [107] red-headed, freckle-faced, or anything else. That is very clear.

The statute in Section 10(c) goes further, and provides that the Board will not order reinstated or give backpay to any person who has been discharged for cause. What is "for cause"? It is very clear that Congress meant and this Board understand "for cause" to mean a reason which is not protected under the statute. Our position, therefore, is, if we admit that Cody was a supervisor, if we admit that he was discharged, it makes no difference for what reason he was discharged. He was discharged for cause, because it is not protected.

Therefore, if this Board is to order the man reinstated or is to order backpay, it will contravene Section 10(c) of the statute, as well as the entire spirit of the statute. If the Board should order him hired as a brand new employee, then the Board will be doing indirectly what it is prohibited from doing directly.

We recall that in the Phelps Dodge case, first the Wambach Mills case, that the Board held and the courts sustained the authority of the Board to order the employer to hire a person. The basis for that was that that person was an employee. If the Board should attempt to order an employer, order this respondent, to hire a man who had been discharged for cause, it would be violating the spirit, if not the letter, of the [108] statute.

There are numerous cases where the Board has distinguished between protected union activity or protected concerted activity and unprotected activity. Our position is that if a man was a supervisor, then the activity was not protected and he may not therefore be ordered hired or reinstated.

I am not going to burden the record or take the time to argue further that point. I think that our position is quite clear on the state of the record as it is now. There may be many questions that will arise after the evidence develops, but for the purposes of the motion at the present time that generally is our position. [109]

* * * * *

Mr. Hackler: A few words on the Cody case. I think it is probably very clear now, the theory of the Complaint, which is that they discharged Cody, as alleged in the Answer, at the time when he was a supervisory employee for his refusal on management's request to do striker's work, and they argue that at the time of the strike they had a right to discharge him because of this, since the position which Cody held at that time was such as to render him a non-employee under the statute. They say that it did not [149] affect Cody as an individual, since the statutory provision removes supervisors as supervisors from the protection of the Act.

Trial Examiner Scharnikow: I think I understand that pretty well.

Mr. Hackler: You got that.

Now, I do want to cite to you in that connection two cases, the Lily Tulip Cup case, which is an inter-

mediate report, has not reached Board decision, 10-CA-279. In that, substantially the same issues were before Trial Examiner Fitzpatrick with reference to a supervisor.

Another recent case of the Board, Carnegie Illinois Steel Corporation, 13-CA-2799, a Wagner Act case, in which the Board declined to reinstate mechanical supervisors on the narrow ground that they did not refuse—on account of the type of refusal there.

I do want to, I might just as well put this on the record at this time, call attention to the Pinaud case, 54 NLRB 1226—

Trial Examiner Scharnikow: That is on the supervisor point?

Mr. Hackler: Yes, sir. And also the Denver case, 52 NLRB 81, and the cases cited by the Board in that Carnegie case.

The position of the company here is that there is no [150] offer to order reinstatement of this man to a supervisory job, and that the company, because of Section 10 in that respect, has no obligation. The fact that the section appears in the statute is purely a limitation on remedies, because if you notice in the other section it is very different. For example, a man who is a member of an affiliated union or non-affiliated union, it doesn't have any bearing at all if an unfair labor practice was committed. The fact that the Act says you fellows are on your own does not make it unprotected in the sense referred to.

I might point out that it is a very serious matter in the decision along the lines as suggested here might

have some very interesting repercussions. If, for example, the for cause matter precedes the interpretation urged by opposing counsel, it might be interesting to see whether the Trial Examiner or the Board with reference to, for example, agricultural laborers, who are also non-employees in exactly the same manner as a supervisory employee, if he is fired because of joining the union and there is no remedy for him, the same as the supervisor, if that can blackball him when he appears at the gate asking for a different job.

Now, I think it would have very serious effects, a holding of that kind, and I want to get a step farther in saying that if this type of interpretation were made that [151] is urged, if it were afforded the Texas Oil Company legitimate cause to refuse this man new employment, the fact he would not engage in strike breaking work as a supervisor, it would have equally afforded any other company, because if it is just cause for Texas it would be just cause for Standard. They could say, "We will decline your employment because of your misconduct over at Texas." I don't see how that would be escaped. You would have a device by which a man would be permanently black-listed the rest of his life in any given industry if he made the mistake of supporting a rank and file union. I don't think Congress intended that. I say, if there is such a decision, the rank and file people in this company will think a long time before they will take an upgrading to a supervisory job if that sort of choice would be made to them.

When they remove themselves, or are removed, from supervisory jobs, they can't even get back in the ranks unless they completely repudiate their union. I don't think you will find in the legislative statute any statute on the part of Congress to destroy or discourage union activities by supervision. [152]

* * * * *

Mr. Brooks: I would like to make one final mention of this Cody case. As I said, I don't want to burden this record now with these arguments. It should be noted that Section 10(c) doesn't say that the Board is prohibited from reinstating any employee who was discharged for cause; it says any individual, uses the word "individual."

Now, Mr. Hackler says that the Act eliminating supervisors doesn't effect Mr. Cody as an individual. We say that if he was discharged for cause, as they admit he was because he has no recourse, then, that is for cause. Then we say they can't order him reinstated. He says they are not asking for reinstatement; they are asking for employment. I believe that the word "reinstatement" means to put the man to work again.

Now, I would like to inquire through the Examiner, are they asking for any back pay?

Mr. Hackler: Certainly, and I might say apropos that the use of that word "individual," while it is our contention that the unfair labor practice was the refusal of rank and file employment to him is a matter of remedy, the Board might, in my judgment, at least, not only order him hired as a rank and file worker, but under that section might properly,

if they deem to effectuate the policies of the Act, actually order him reinstated to the supervisory job as a matter of remedy with the [155] appropriate back pay order in either instance, not because he was fired from the supervisory job, but to remove the effects of the unfair labor practices from the minds of the employees, the rank and file employees, as arising from the refusal to hire him at the gate as a rank and filer, a clear indication to them that union activities—in other words, to restore the status quo as to him as a remedial device for the benefit of the rank and file employees.

Mr. Brooks: Then when Congress removed supervisory and specifically made them a part of management, the whole Act of Congress was a farce. [156]

* * * * *

ALFRED GEORGE CODY

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Purver): What is your full name, sir? A. Alfred George Cody.

Q. What is your address?

A. 2768 Main Avenue, Long Beach, California.

Q. Are you presently employed?

A. Yes, sir. [195]

Q. By whom?

A. By the Oil Workers International Union, Local 128.

Q. How long have you been employed by Local 128?

(Testimony of Alfred George Cody.)

A. Been employed off and on since November 22, 1948.

Q. Did you ever work for The Texas Company?

A. Yes, sir.

Q. When did you first work for The Texas Company?

A. Started to work for them on April the 6th, 1928.

Q. In what capacity? A. As a laborer.

Q. Did you have any other jobs with The Texas Company?

A. Yes, sir. I had many jobs in the Pipeline Division.

Q. Will you describe them to us, and how long you were on each one?

A. I worked in the labor gang something like three weeks, and was promoted to pumper No. 1; worked in that capacity at different stations for The Texas Company, in the LA Basin Area, until about 1941, at which time I took a leave of absence to serve as an International representative for this union.

Q. How long? A. Eighteen months.

Q. Then did you go back to The Texas Company?

A. Yes, sir.

Q. In what capacity? [196]

A. As a pumper.

Trial Examiner Scharnikow: Is there any difference between a pumper and a pumper No. 1?

Q. (By Mr. Purver): Mr. Cody, can you tell him?

(Testimony of Alfred George Cody.)

A. Yes, they have classifications, pumper No. 1 and pumper No. 2. I am talking about pumper No. 1.

Trial Examiner Scharnikow: When you came back you were pumper No. 1 again?

The Witness: Yes.

Q. (By Mr. Purver): Do you know whether the company has a policy of making an award of any sort after twenty years of service?

A. Yes. They award you with a 20-year service pin, and I also received a letter from the vice-president of The Texas Company in charge of refineries.

Mr. Purver: I ask that the reporter mark for identification, as General Counsel's Exhibit 18, what purports to be a copy of the letter referred to by the witness.

(The document referred to was marked General Counsel's Exhibit No. 18 for identification.)

Mr. Purver: Will the parties stipulate that that is a true and accurate copy thereof?

Mr. Brooks: Mr. Examiner, I am unable, for lack of knowledge, to stipulate that this is a true and correct copy of the one the witness received; but I will stipulate it is [197] the practice of the company to write this kind of letters when the employee has been with the company for twenty years.

Trial Examiner Scharnikow: Do you accept the stipulation?

Mr. Purver: At this point I will ask the reporter to mark the original, instead of the copy.

(Testimony of Alfred George Cody.)

Mr. Brooks: Is that stipulated, that it is the practice of the company?

Mr. Purver: To send letters; but not exactly the same kind. There are different letters sent to different people after twenty years of service.

Mr. Brooks: Letters of commendation, signed by the appropriate vice-president.

Mr. Purver: Yes.

Mark this the same number.

(The document referred to was marked General Counsel's Exhibit No. 18 for identification.)

* * * * *

Q. (By Mr. Purver): I hand you what has been marked for identification as General Counsel's Exhibit 18, and ask you if that is the original that you received on or about April 1, 1948?

A. It is. [198]

Mr. Purver: I now offer in evidence General Counsel's Exhibit 18.

Trial Examiner Scharnikow: Any objection?

Mr. Brooks: No objection.

Trial Examiner Scharnikow: General Counsel's Exhibit 18 is admitted in evidence.

(The document heretofore marked General Counsel's Exhibit No. 18 for identification, was received in evidence.) [199]

(Testimony of Alfred George Cody.)

GENERAL COUNSEL'S EXHIBIT No. 18

True Copy

The Texas Company
135 E. 42nd St., New York 17, N. Y.

M. Halpern
Vice President

April 1, 1948

Mr. George Cody
2768 Maine Avenue
Long Beach 6, Calif.

Dear Mr. Cody:

I am pleased to note that you will complete twenty years of continuous service with The Texas Company on April 6th, and I wish to offer my congratulations on this occasion.

Management sincerely appreciates your long service and the satisfactory manner in which you have handled your assignments. It is gratifying to learn from Mr. Dreyer of your ability, initiative and willingness to always satisfactorily perform all work assigned. Such an enviable record must be a great source of personal satisfaction to you.

Trusting that you will enjoy many more years with us and with kind regards, I am

Sincerely yours,

/s/ M. Halpern, Vice President

MH:MCK

[Cancelled Registered Envelope attached]: Ad-

(Testimony of Alfred George Cody.)

dressed to Mr. C. O. Moore, 1708 Gardena, Long Beach, California. Registered No. 93745.

Mr. Purver: I now ask leave to substitute a copy thereof.

Mr. Brooks: No objection.

Trial Examiner Scharnikow: The copy may be submitted for General Counsel's Exhibit 18, as General Counsel's Exhibit 18.

I have something that may be helpful on this problem. Am I correct in my understanding, from the pleadings and the various statements of counsel, that it is undisputed that this man was discharged on September 28, 1948, because, as a supervisor, he either absented himself from work during the strike or actively joined in the strike? Is that so?

Mr. Brooks: Not exactly as stated, your Honor.

Mr. Hackler: We concede he was discharged—I assume you have the correct date, but the evidence will show the circumstances under which he was discharged.

Mr. Brooks: Yes. It was that he was discharged for refusing to perform work.

Mr. Hackler: The extent of our stipulation is that he was discharged, and that he was a supervisor when he was discharged.

Rather than take some conclusionary statement, like, "refusing to work," or refusing to do "scrub work," I prefer that the evidence describe that.

Mr. Brooks: Of course, we will stipulate that he was [200] a good employee for 20 years, if that is the

(Testimony of Alfred George Cody.)

purpose of this. I am not objecting to it. But it may get a little bit burdensome if they go through 20 or 21 years of service.

Mr. Hackler: I think you will stipulate he was a good employee as far as you were concerned, up to the occasion he was discharged?

Mr. Brooks: I might even stipulate, Mr. Hackler, he was a good employee after that time.

Mr. Hackler: All right, let's do that. So stipulated.

Trial Examiner Scharnikow: Do I have such a stipulation?

Mr. Brooks: No, sir. I am afraid somebody might draw the wrong conclusion. [201]

* * * * *

Q. (By Mr. Purver): What is the job that you had immediately prior to the time that you received the letter, which is now in evidence as General Counsel's Exhibit 18?

A. It was assistant district foreman of the Pacific Coast Pipeline.

Q. When were you made assistant district foreman of the Pacific Coast Pipeline?

A. My job was made effective as of February 1st, the pay end of it.

Q. 1948? [202]

A. Yes. But the time I went on the job physically was on February 15, 1948.

Q. And what was the job you had immediately prior thereto? A. A field gauger.

Q. How long did you have that job?

(Testimony of Alfred George Cody.)

A. About two years.

Q. As assistant foreman, did you participate in any grievance committees? A. No.

Q. Did you sit in on any grievance committees after you were notified that you were being made assistant foreman? A. No, sir.

Q. And now, did you go on vacation?

A. Yes, I did.

Q. In 1948? A. Yes, sir. [203]

Q. Now, what time of the year?

A. August 23, 1948, to and including August 12—or September 12, 1948.

Q. When you came back, did you go right back to your job?

A. When I came back from vacation, I called Mr. Jones, either on Thursday or Friday, the 8th or 9th, and told him that I was back and would be ready to work Monday. He told me that there was some trouble. I asked him what the trouble was, and he said that there was a strike on. I laughed and told him it looked like I could have some more vacation.

He said no, that the company had a pass for me and that I could come back to work Monday.

Mr. Purver: At this time I would like to ask the reporter to mark for identification as General Counsel's Exhibit 19 a little document.

(Thereupon the document above-referred to was marked General Counsel's Exhibit No. 19 for identification.)

(Testimony of Alfred George Cody.)

Q. (By Mr. Purver): I will ask you, Mr. Cody, what this is.

A. This is a pass that was brought to my house by Mr. Letson.

Q. Who is Mr. Letson?

A. He is district foreman, was the district foreman directly over me, was brought to my house and given to my wife, and on Saturday, I believe, either Friday or Saturday, September 10 or 11, I am not too sure.

Mr. Purver: I now offer in evidence General Counsel's [204] Exhibit 19.

Mr. Brooks: May we see it?

Mr. Purver: Please.

Mr. Brooks: Did you offer that?

Mr. Purver: I am offering it now, yes.

Mr. Brooks: We have no objection.

Trial Examiner Scharnikow: General Counsel's Exhibit No. 19 is admitted in evidence.

(The document heretofore marked General Counsel's Exhibit No. 19 for identification was received in evidence.)

GENERAL COUNSEL EXHIBIT No. 19

PICKET LINE PASS

Date Sept. 6, 1948

Long Beach Local 128, O.W.I.U.-CIO

Pass G. Cody through picket line from Sept. 13
to

Signed Herbert S. Bean

(Testimony of Alfred George Cody.)

Q. (By Mr. Purver): Was that pass ever revoked?

A. No, sir, not to my knowledge.

Q. Or called in? A. Not to my knowledge.

Q. You still have it, in other words?

A. Yes, sir.

Q. Mr. Cody, you started working for The Texas Company over 20 years ago? A. Yes, sir.

Q. Did you ever join a union?

A. Yes, I first joined the Employees Association.

Q. When was that? A. In 1933.

Q. Did you hold any office in it?

A. Yes, sir. [205]

Q. What office?

A. Chairman of the Workmen's Committee in The Texas Company, Pipeline Division.

Q. For the Employees Association?

A. Yes, sir.

* * * * *

Mr. Hackler: Can it be stipulated that it was a labor organization?

Mr. Brooks: We will stipulate that it was a labor organization as defined by the National Labor Relations Act of 1935. However, that act was not in existence in 1933.

Mr. Purver: That is the reason for the question. He didn't say there was a labor organization.

Mr. Brooks: If the National Labor Relations Act had been in effect in 1933 as it was until 1947, I assume he would have been a member of a labor organization. We will stipulate [206] to that.

(Testimony of Alfred George Cody.)

Mr. Purver: So stipulated.

Q. (By Mr. Purver): As such an official of the association, did you come in contact and deal with members of management? A. Yes, sir.

Q. When did you join the Oil Worker's Union?

A. 1934.

Q. Did you notify the company of that?

A. I didn't see any reason to.

Mr. Brooks: I move to strike the answer as non-responsive.

Trial Examiner Scharnikow: I will strike the answer.

Let me ask the question now. Did you notify the company? Did you or did you not?

The Witness: Well, in this way, there was a meeting in the—trying to think of the name of the hotel.

Mr. Brooks: What did you say, Mr. Cody?

Trial Examiner Scharnikow: He is trying to think of the name of the hotel.

The Witness: I can't think of it. It was in Long Beach. At the time management was there and a group of employees, and I asked management if there was any objections, Mr. Holmes was, I believe, then the top guy in the manufacturing end, if there was any objections to a person belonging to the Oil Workers Union and being a member of this committee. He said there were no objections. [207]

Mr. Brooks: Mr. Examiner, I hate to interrupt, but so we can have him identified, at this time could

(Testimony of Alfred George Cody.)

we ask the witness who Mr. Holmes was? He said Mr. Holmes said that.

Trial Examiner Scharnikow: Yes. He said he was the top production man at the time.

The Witness: No, manufacturing.

Trial Examiner Scharnikow: Top manufacturing man.

Mr. Brooks: All right. I didn't hear that. I am sorry.

Q. (By Mr. Purver): When did you take time out to act for the Oil Workers Union?

A. You mean my first leave of absence?

Q. Yes, sir.

A. It started some time in 1941 and I came back to work in time to take a vacation before the first of 1943.

Q. Did you take any other leaves of absence?

A. Only to attend conventions and things of that sort, no long periods.

Q. Now, where did you work for The Texas Company, what area?

A. What is known generally as the L. A. Basin Area. [208]

* * * * *

Q. (By Mr. Purver): When was the last time, Mr. Cody, that you took leave to attend to union business?

A. In August, 1947, to attend the Oil Workers Convention in Kansas City.

Q. Now, will you describe how you came back from vacation, tell me what was your first assign-

(Testimony of Alfred George Cody.)

ment after you returned from your vacation in 1948, in September?

A. I returned, as stated, called up, and Mr. Jones told me about the strike, and told me that he had a pass for me and had sent that pass over to the house. During vacation times the company takes the car away from you that they furnish you, and he told me I could come into the refinery and pick up both the pass and the car.

I told him I didn't want to do that, that I thought he should bring it out to me, and they did. They delivered my car out to Los Alamitos headquarters of the pipeline and sent Mr. Letson over to my house with the pass.

Q. Do you know of your own knowledge how the company acquired that pass?

A. No, the only thing I know is what happened in the past, and I imagine that is the same thing that happened this time, but I don't know that.

Mr. Purver: Can we stipulate as to how the pass system was set up?

Mr. Brooks: In the refining department, pipeline [217] division?

Mr. Purver: Yes.

Mr. Brooks: We can try.

Trial Examiner Scharnikow: Off the record.

(Discussion off the record.)

Trial Examiner Scharnikow: On the record.

Mr. Brooks: Mr. Examiner, I will state the situa-

(Testimony of Alfred George Cody.)

tion with respect to the passes, as I understand it to have been at that time.

Shortly after the strike began the union, through the local workmen's committee for the respective locations, worked out with the local management an arrangement whereby passes would be made out and signed by the local workmen's committee, a member of the local workmen's committee, to individuals, which passes would permit the individuals to come through the picket line without any kind of question on the part of the pickets or the union.

Mr. Hackler: As far as I know that is correct. I can't say for certain whether in each instance in each bargaining unit that arrangement was made after 12:01 midnight of the 4th, or whether in some instances such an arrangement had been arrived at with the local management or by somebody before that, prior to the actual appearance of the pickets.

Mr. Brooks: I accept that exception.

Mr. Purver: So stipulated. [218]

Trial Examiner Scharnikow: Just so that I understand it, Mr. Cody, your last leave of absence on union business was in August, 1947, for the Kansas City Convention?

The Witness: Yes, sir.

Trial Examiner Scharnikow: Then you went on and you testified about getting a pass and having your company car delivered to your home. Was that in September of 1948 or '47?

The Witness: September, 1948.

(Testimony of Alfred George Cody.)

Mr. Purver: You see, the witness early in 1948 became a supervisory employee.

Trial Examiner Scharnikow: I just thought the witness had slipped in the year he gave, that is all. Incidentally, if I may——

Mr. Purver: Please.

Trial Examiner Scharnikow: In September, 1948, what plant were you working at as a supervisory employee?

The Witness: Pipeline division.

Trial Examiner Scharnikow: Pipeline division, and where is that?

The Witness: The headquarters for the pipeline division is L. A. Works Refinery, just east of Alameda Boulevard on Highway 101.

Trial Examiner Scharnikow: Will you show that to me on General Counsel's Exhibit 20, please? That is in——

The Witness: That is in Wilmington. [219]

Trial Examiner Scharnikow: That is included at least within the Signal Hill Headquarters as shown on this map, is it?

The Witness: No, it is over in here. Here it is, right here.

Trial Examiner Scharnikow: Did you work out of the Signal Hill Headquarters?

The Witness: No, I worked out of the L. A. Works Refinery.

Mr. Brooks: The refinery is not indicated on the map.

The Witness: Yes, it is.

(Testimony of Alfred George Cody.)

Mr. Brooks: The L. A. Works is the refinery, and is not included in this proceeding.

The Witness: They have it marked here "Texas Company Refinery."

Mr. Brooks: Oh, I am sorry. Maybe it does show that.

Mr. Hackler: It is not one of the red marks.

Mr. Brooks: That is right. It is not one of the red marks. It is shown just northeast of Wilmington.

Trial Examiner Scharnikow: It is shown just southwest of the Signal Hill Headquarters and just northeast of Wilmington, is that correct?

Mr. Avery: That is right.

Trial Examiner Scharnikow: And were the employees whom you supervised in one of the units covered by the union contract?

The Witness: Yes. [220]

Trial Examiner Scharnikow: And which of the three contracts, General Counsel's Exhibits 2, 3 and 4?

The Witness: None of these.

Trial Examiner Scharnikow: None of those. All right. If I may, maybe you can answer this question for me: Were the employees supervised by this man in the unit, in the refining unit covered by that stipulation?

Mr. Hackler: They were.

Trial Examiner Scharnikow: Can we stipulate on that?

Mr. Brooks: Yes, sir.

Q. (By Mr. Purver): You then received your

(Testimony of Alfred George Cody.)

pass and the automobile at the same time, is that it?

A. One one day, and went out and picked up the car the next day.

Q. What was the job you were assigned to?

A. I was told to do patrol work.

Trial Examiner Scharnikow: What kind of work?

The Witness: Patrol work. That meant to ride the lines and check the various pump stations in the L. A. Basin area, to work from 12:00 midnight until 8:00 a.m. At that time I would be relieved by another person at Los Alamitos headquarters.

Q. (By Mr. Purver): Had you done that sort of work before? A. No, sir.

Q. What work had you done before as a supervisor? [221]

A. My general work was to make schedules for the various operations, such as the pump stations, field gaugers, break in people on various jobs in the pipeline division from the line-riding job to the field-gauging jobs. I broke them in with other employees and checked to see that their work was progressing, and that was the line of my work.

Q. Now, had you done various sorts of jobs within the pipeline division prior to your being made a supervisor? A. Yes, sir.

Q. In the course of those years, ever been assigned to patrol pipeline? A. No, sir.

Q. Either as supervisor or nonsupervisor?

A. No, sir, only partially as a gauger. It is part of the gauger's duty to look after the lines in his area.

(Testimony of Alfred George Cody.)

Q. That is, as a nonsupervisory employee?

A. Yes, sir.

Q. Did you perform the assignment given to you of patrolling the pipelines? A. I did.

Q. For how long? A. Until I was canned.

Trial Examiner Scharnikow: Until what?

The Witness: Until I was discharged.

Q. (By Mr. Purver): Describe the circumstances of your [222] discharge?

A. The first week I didn't have any—the week that I was working from 12:00 midnight until 8:00 a.m. there didn't anything happen. The next week I was scheduled on from 8:00 to 4:00, that is, 8:00 a.m. to 4 p.m., Monday through Thursday, and Friday afternoon I was scheduled to work 4:00 p.m. to 12:00 midnight. On Tuesday of that week there was some strappings, that is, measurements on tanks that were to be delivered to some parts.

The next day there were some run tickets that were to be delivered to some parts, and I was not asked directly to take them; they were put on my desk and I just forgot to take them.

On Thursday of that week, Thursday afternoon, around quitting time I had a little bit of time left and was covering a very bad strip of road that our main pipeline ran along on 29th and California, and there was an accident between a Long Beach policeman who was off duty and the car that I was driving, or the company car.

I was taken to the hospital and determined that there wasn't any fracture, and reported the next afternoon for work as scheduled. Mr. Jones then gave

(Testimony of Alfred George Cody.)

me Saturday, Sunday, Monday and Tuesday off.

Q. May I interrupt you to ask you who Mr. Jones was?

A. Mr. Jones is the assistant superintendent, and I was [223] home during this time nursing this shoulder, and received a telephone call Monday to report at noon to Mr. Jones.

Q. What Monday is that? What date is that? Can you fix that date?

A. The date was Monday the 27th, then I was to come back on Tuesday at noon of the 28th.

Q. Go ahead.

A. I didn't know exactly what I was being called in for, didn't know whether it had something to do with the accident or some other things, but when I got in there and got in Mr. Jones' office, I got in early, he told me that the company had changed their mind now, that they were going to start up operations, that they were going to put the employees on 12 hours a day six days a week and pay them time and a half for 32 hours, and said that we were going to begin riding now in pairs, and he assigned another man to go with me, and I have been trying for three weeks to think of the guy's name.

He was a junior engineer who worked for the company, and I can't place his name.

He told me the job that he wanted me to do was to go over to the Yorba Linda pumping station and gauge and sample the tanks—there are three of them—and get that station prepared to run.

I went into a great length to tell him that I had been a member of this union for years and years,

(Testimony of Alfred George Cody.)

that they knew that [224] I had served on the workmen's committee for or as a representative of the employees ever since 1933, with the exceptions of the times that I was on leaves of absence as an international representative for this union, told them that I had also served on a committee in the Harbor where the Commie element during certain periods were very bad, told them that I had worked very hard in this union, to keep this kind of thing out of our union, told them also that I had built a room on the back of my house and had paid cash for it and I didn't have too much dough.

By about the time I got through telling Mr. Jones all of this, Mr. Dreyer, who was walking through the hall of the office——

Q. Who?

A. Mr. Dreyer, the superintendent, was walking by, and Mr. Jones waved him in. He told Mr. Dreyer that George didn't see fit to do the work that he assigned, and he wanted to know what he was going to do about it.

Q. By George you are referring to yourself?

A. That is right.

Mr. Brooks: We will stipulate Mr. Dreyer is E. L. Dreyer.

Mr. Purver: So stipulated.

Mr. Brooks: And Mr. Jones who has been referred to is F. A. Jones.

The Witness: I went through about the same conversation with Mr. Dreyer in Mr. Jones' presence as I had with Mr. Jones. He told me that that was the

(Testimony of Alfred George Cody.)

assignment that I had to do. I [225] asked him if I couldn't haul this other person and let him do the work, and he said no, that wouldn't be fair, to send the guy in Long Beach to do the work and not the other; if I couldn't do the work that they would have to discharge me.

I told him that he would have to give the order, and he did, and I refused to do work back of the picket line.

Mr. Jones——

Q. (By Mr. Purver): Just a moment, please. Who normally did the gauging and sampling work that you were asked to do?

A. In this particular instance, the pumpers No. 1.

Q. A category covered by the contract?

A. Yes, sir.

Q. Work done by nonsupervisory employees, in other words? A. Yes, sir.

Mr. Purver: I think it would be well to clarify the record by saying that at that time there was a contract, but that contract is not in evidence and we do not intend to put it in evidence at this time.

Mr. Brooks: That is correct. [226]

Mr. Brooks: To maintain my absolute honesty, Mr. Examiner, the contract had expired on that particular date, but there was a contract that had expired——

Mr. Purver: That had been covered prior to that.

Mr. Brooks: Yes. You know me.

Mr. Purver: With that understanding, I rephrase my statement.

(Testimony of Alfred George Cody.)

Q. (By Mr. Purver): Mr. Cody, in the course of your conversation you just described at some length, you described what you told Mr. Jones as to your activity in the union? A. Yes, sir.

Q. Now, you have merely testified so far as to what he told you. Now, are the things that you told him the things you actually did and activities in which you actually took part? A. Yes, sir.

Q. Now, will you go on?

A. As Mr. Dreyer left the office, Mr. Jones followed him out and told me to set there a few minutes.

First, I should say Mr. Jones asked Mr. Dreyer what he meant by that.

Q. Tell me, what time of the day was this?

A. This was around noon.

Mr. Dreyer said that "He," meaning me, would have [227] to take his chances along with the rest of the strikers; and he turned to walk away, and I thanked him, after 21 years of service.

Mr. Dreyer walked out, and Mr. Jones followed him. As he left, he told me to wait a few minutes, and came back in and told me if I would wait at the office until 4:30 they would have my time made out in full.

I told him I was discharged at that time. If they didn't trust me to drive the car home, they could get someone to take me home. At that time they got Richard Hight to drive me home.

Q. Mr. Cody, I hand you what is in evidence as General Counsel's Exhibit 2, and ask you whether that represents, on page 37, the written name, signed

(Testimony of Alfred George Cody.)

“George Cody, Chairman, Negotiating Committee,”
represents your signature? A. Yes, sir.

Q. Did you take part in those negotiations?

A. All of them.

Q. All of them, you mean, covering what contract, sir?

A. All of them covering all the contracts for that year.

Q. That was the year of 1947? A. Yes, sir.

Q. You have now brought us home, Mr. Cody; is that correct? You then went home that afternoon, is that correct?

A. Went home and told my wife I had been discharged. [228]

* * * * *

Trial Examiner Scharnikow: I will overrule the objection, Mr. Brooks, and admit General Counsel's Exhibit 22 in evidence.

(The document heretofore marked General Counsel's Exhibit No. 22 for identification was received in evidence.) [240]

GENERAL COUNSEL'S EXHIBIT No. 22

Constitution and By-Laws of the Oil Workers International Union—1949

* * * * *

Withdrawal Cards

Section 5. When a member leaves the jurisdiction of the International Union he may take a withdrawal

(Testimony of Alfred George Cody.)

card providing he has paid all fines, assessments, and dues for the current month in which the request for withdrawal card is made.

When a member in good standing is promoted to a position outside the jurisdiction of the Local collective bargaining unit in effect at the plant where he is working (this does not mean outside the jurisdiction of a local agreement in effect at a plant only, but all employees effected and within the bargaining agency) he will be issued an honorable withdrawal card upon request, provided he has paid dues, all fines, assessments, and Dues for the current month in which the request is made.

Any member holding a withdrawal card who again resumes work within the jurisdiction of the International Union shall pay the current month's dues to the Local in whose jurisdiction he is employed. A member depositing withdrawal card with a Local Union may be accepted upon receiving a majority vote of members present at a regular meeting.

Any member who fails to deposit his withdrawal card within ten (10) days after resuming work, with the Secretary of the Local shall be subject to revocation of such withdrawal card and his membership shall be subject to reinstatement rules as provided in the Local By-Laws as if no withdrawal card had been issued.

* * * * *

Mr. Hackler: I wish to show, and I am not arguing all my inferences in connection with a routine offer of documents, clearly that the man at the time

(Testimony of Alfred George Cody.)

he took the supervisory job—and we hope to show that all times after that the policy of this company as reduced to writing in two collective bargaining agreements, and quite aside from those agreements, the hiatus period between them, that it had a policy that men promoted to supervisory status, who, for any reason, didn't do the job to the satisfaction of management, had a right to demotion, to their former job, with full seniority, including the seniority time when they were in the supervisory category.

With reference to the withdrawal cards, we will show by the Constitution the practice, and these contracts, that it was the practice for these men to take withdrawal cards and reinstate their full membership if they went back down. Do you say that that doesn't have anything to do with motivation based on the situation this man testified to yesterday, and that that motivation won't carry over into the refusal of employment later at the gate? I understand it will be argued from the respondent's standpoint that it wasn't because he was a strong man and supported the strike that they were motivated, but "We just don't like disobedient people around."

That will be argued ad nauseam in this case, and that there was another route this company could have followed if it had been worried about union activities.

We have not changed the theory of the Complaint in any respect. We feel that we ought to be able to show evidence on this motive issue, and as I have

(Testimony of Alfred George Cody.)

said before, as to any of these documents, if the questioning of the witnesses shows that these are not material, not relevant, or not entitled to any weight, or that the inferences that we have that are unwarranted, nobody is hurt.

Trial Examiner Scharnikow: I think we ought to consider General Counsel's Exhibit No. 24.

Mr. Brooks: May I make one observation with respect to the last comments of Mr. Hackler? He stated that the company should have demoted the man. If we violated the law there, that is not charged in the Complaint. The first date on which we are alleged to have violated the law with respect to Cody is November 16th.

Now, if they are charging here that, we are beginning to get somewhere, I see now what his purpose is here, but I say [252] that that is beyond the Complaint.

Mr. Hackler: I think my statement was clear that there isn't any charge——

Trial Examiner Scharnikow: We started to consider Exhibits 22, 23 and 24 separately. What about 24?

Mr. Hackler: Exhibit 24, Mr. Examiner, the relevant portion of that is Article 7 and the chart in the back of the book. Article 7 provides the effect of seniority on promotion. It clearly shows, it does in the document and we intend to tie it down by evidence, that contract is now in force.

If the Board ordered this man reinstated or put on a job in a non-supervisory category with his

(Testimony of Alfred George Cody.)

seniority accumulated with this company, the argument has been advanced here that he would automatically progress up and be a supervisor again, so that we are attempting to do indirectly what, in Mr. Brooks' view, we couldn't do directly, namely, reinstate the man as a supervisor.

That contract now in force indicates what effect putting this man on a non-supervisory job would have and the effect of it would be that his line of promotional progression shown by the chart on the last page stopped short of supervisory status.

Mr. Brooks: Mr. Examiner, in the first place, counsel has misquoted. We have made no contention that if this witness [253] is ordered employed, as the Complaint says, that he would automatically go up to a supervisor by the practices or by the contract or by anything else that the company follows.

We argued that the Board, the General Counsel, was seeking to do indirectly what is prohibited, what it is prohibited from doing directly, in that counsel for the General Counsel stated that they were seeking the man's employment as a new employee, and he was answering my argument that 10-C said you cannot reinstate him.

Now, if this man is employed pursuant to the order of the Board, it is our position that he would go in as a brand new employee just like we had never seen him before. I would like to ask in that connection to determine whether further objection on the materiality of this document, whether counsel is contending that the remedy should be an order of employ-

(Testimony of Alfred George Cody.)

ment with all of his past seniority or past service credits.

Mr. Hackler: I think I straightened that out yesterday. In our view, the company on the date of November 16th, or whenever it was, was under an obligation to employ this man as a new employee at the gate, or the Phelps-Dodge theory. Having refused to do so, as to what will remedy that refusal is up to the Board, of course. As far as remedy, that is, removing the effects of that refusal, it might be the Board would say to completely remedy it [254] in the minds of the employees, the remedy would go beyond what the obligation was on the day he appeared there and was ordered put on the job with his seniority. I don't maintain there was obligation to take him that day with his twenty some years seniority.

Trial Examiner Scharnikow: What Mr. Brooks put to you is whether or not when he appeared and asked for employment on November 16th, whether or not the company should have regarded him as an applicant.

Mr. Hackler: That's right.

Trial Examiner Scharnikow: With seniority rights. Am I putting this fairly, Mr. Brooks?

Mr. Brooks: That is one of the questions in my mind.

Trial Examiner Scharnikow: Let's get that first.

Mr. Brooks: Whether or not the company at that time was obligated in the counsel's mind to hire the man and give him credit for his past service. That

(Testimony of Alfred George Cody.)

is the first question, whether the company was obligated.

Trial Examiner Scharnikow: It is possible that Mr. Hackler may argue that the right of this man of employment was bulwarked by his seniority rights by past contracts as contained in General Counsel's Exhibit No. 24. Is that your position?

Mr. Hackler: Well, not in exactly those words. I contend, and I think it is reasonably simple, that this company [255] had a duty to employ this man at or about the time he applied for a non-supervisory job.

Now, Mr. Brooks tells me, "do I go further"? Do I go further and say he had some further duty to accord him his seniority rights at the gate? I say no. Had the company hired him that day and put him on the job as they would a stranger, there would have been no unfair labor practice in my view. At least, this proceeding wouldn't be here. He wants me to go ahead further and say in remedying that activity that the Board should not do more than order the company to do that, and not go further and correct his seniority. The two are distinct.

Trial Examiner Scharnikow: You pointed out in General Counsel's Exhibit 23 for identification that there is a provision to the effect that a supervisor proving incapable of performing the supervisory duties is entitled to go back and take a rank and file job with his seniority.

Now, the question put by Mr. Brooks, so far as I see it, is whether or not you contend that when this

(Testimony of Alfred George Cody.)

man, having been discharged as a supervisor in September, came back in November and asked for employment as a rank and file employee he was entitled not only to the considerations given to a completely new applicant for employment, but also to the consideration of the accumulated seniority to which he would be entitled if General Counsel's Exhibit 23 were still [256] in effect.

Mr. Hackler: Not so contended. As I said earlier, the offer goes to motive, both then and later. I don't contend—you may note from the charge filed in this case, Mr. Examiner, that it was couched on the theory that this man, when he was discharged, that when the company asked him to do non-supervisory work, that he became a rank and file employee or in a non-supervisory position, and that as such he had the protections of the Act at that time.

The Complaint is not under that theory. It isn't on a theory that there was a duty to demote at that time and that it was an unfair labor practice to fail to demote, nor is it on the theory that when he came back later he, in effect, asked for a demotion under the contract. That isn't our theory.

Our theory remains the Phelps-Dodge theory. These are evidentiary, going to two theories, what was the motive of refusing employment at the gate, and (2), what is the remedy, assuming it was an unfair labor practice to refuse him. The remedy might well go beyond, as I have suggested, the duty that existed at the time.

Mr. Brooks: Mr. Examiner, this is rather funda-

(Testimony of Alfred George Cody.)

mental. In the first place, taking that last statement, does counsel contend that the Board can go beyond the allegations in the Complaint? The allegations in the Complaint are [257] that we refused to employ the man on November 16, 1948.

Now, counsel is indicating that this proposed document is material in order to show to the effect that the company should give, and since it did not give effect to his past seniority, then the Board should order us to give effect to that past seniority. That goes beyond the Complaint. If this Complaint is meritorious in Paragraph 7 regarding Mr. Cody, it is meritorious regardless of how long the man worked for the company. It is meritorious only because General Counsel will have established that the company refused to employ this man on November 16th and thereafter because of union activities, and to discourage membership in a labor organization in violation of 8 (a) (3) interferes with the rights of them under 8 (a) (1).

I still don't know whether General Counsel expects us to meet the proposition that this man would be entitled to reinstatement with back pay beyond November 16th or whether or not counsel is contending we violated the law by refusing to demote on September 28th. If he is not contending we violated the law by not demoting him on September 28th, then this is not material. If he is contending that we violated the law at that time, he is going beyond the Complaint.

* * * * *

(Testimony of Alfred George Cody.)

Trial Examiner Scharnikow: I think it is pretty well shaken down in my mind, but I want to make sure. This is my understanding so far of your argument. You contend, Mr. Hackler, that there are two reasons why General Counsel's Exhibits 23 and 24 are material: First, on the motive question relative to discrimination, and secondly, on the extent of the remedy which will be granted. [259]

Mr. Hackler: Correct.

Mr. Brooks: May I hear the last part of that statement again, please? Will you read it?

(The record was read.)

Trial Examiner Scharnikow: On the motive question, I understand, too, that your contention with reference to Mr. Cody is that he presented himself as an ordinary applicant for employment in November, that he was not entitled to any more consideration by the respondent of his application than any completely new applicant for employment.

Mr. Hackler: That's right.

Trial Examiner Scharnikow: Was not, according to your contention, the respondent was not required to consider any possibility that under the existing contracts—that is, previous contracts and the contract just recently executed on November 4th—that he was entitled to his seniority which would give him a stronger claim to employment than if he had been a complete stranger to the company.

Do you want that read back?

Mr. Hackler: Yes.

(The record was read.)

(Testimony of Alfred George Cody.)

Mr. Hackler: I am not contending that there was a contractual obligation to employ him, but as any other stranger at the gate in assessing whether the company will [260] hire him or not, they will consider any relevant facts concerning the individuals. For example, his previous length of service with that company, his ability to do the work, the circumstances under which he left before.

The fact that under collective bargaining agreement in force at the time he applies for a job, that as to other people there is an obligation to straight seniority as an important factor in hiring, and that sort of thing. In other words, I don't want to say when you use the expression, Mr. Examiner, they were not required to consider certain factors. I don't go for that. I say the company should have considered in the case of Cody, as in the case of any other applicant, any relevant factors in his work history, the past employment practices, the past promotion and demotion practices of that company as evidenced not only by collective bargaining agreements but their custom and practice as going to their motivation.

I don't want the record to suggest here that in looking at the man Cody across the table as an applicant for employment that I am agreeing that he could just as well have been John Jones, who had never worked for the company, or that the company should disregard its contracts and practices with reference to employments and demotions and promotions in the past. I think you must see his applica-

(Testimony of Alfred George Cody.)

tion in the light of employing and promoting practices and [261] demoting practices.

In that connection, we will have evidence as to how these were applied to other supervisors, other supervisors than Cody, as all going to motive.

I am not going to say that this company was under obligation under that contract so that Cody could walk in and lay the contract down and say, "Now, under this contract I have got a job and, if you don't give it to me, you have breached the contract." That isn't our contention. It is our contention that the contractual relationship before and after his discharge are relevant factors going to their motive as to why they turned him away from employment.[262]

* * * * *

Trial Examiner Scharnikow: What Mr. Hackler is now saying in essence, as I understand it, is that even though respondent was not obligated to follow the seniority terms of these contracts with respect to Cody, nevertheless, in a similar and identical situation it follows the substance of those provisions as a matter of practice, while not obligated to do so, it did so in practice.

Mr. Hackler: Yes.

Trial Examiner Scharnikow: Now, of course, it gets to be a pretty close question—I think the discussion has served to limit the Board's position on it. The result of [263] this discussion, the result is that there is no contention that there was a contract obligation to accord the seniority rights to this man as a new employee.

(Testimony of Alfred George Cody.)

Mr. Hackler: That is correct.

Trial Examiner Scharnikow: I have an offer of General Counsel's Exhibits 23 and 24?

Mr. Hackler: Yes.

Trial Examiner Scharnikow: And I have heard your objections and your arguments. I am going to admit General Counsel's Exhibits 23 and 24, in the light of the discussion between counsel, and particularly Mr. Hackler's exposition of the General Counsel's theory.

(The documents heretofore marked General Counsel's Exhibits Nos. 23 and 24 for identification were received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 23

Article VII—Seniority

A. Employees shall have overall Pipe Line Division seniority.

* * * * *

H. When there are no qualified employes with Pipe Line Division seniority, Craftsmen may be hired as such for maintenance and construction work and, if they have been in the employ of the Pipe Line Division for a period of at least one-hundred and twenty (120) consecutive days, they will be subject to demotion from that classification or layoff in the inverse order of their Pipe Line Division seniority.

* * * * *

K. The Company will, for the information of all employes, post a chart indicating the regular steps

(Testimony of Alfred George Cody.)

of promotion and will furnish copies to Long Beach Local No. 128 and to the Workmen's Committee.

* * * * *

M. An employe incapable of performing the duties of a job to which he has been promoted shall not lose his rights to return to the job from which he was promoted, nor his seniority rights to promotion to some job which he is capable of performing.

GENERAL COUNSEL'S EXHIBIT No. 24

Article VII

Promotions, Reduction of Forces, Seniority

A. Promotion to any job vacancy shall be the exclusive function of the Company. In making promotions the Company, in addition to seniority, will consider the following requisites; namely, an employe's ability and efficiency, his past record with the Company, his experience, his willingness to work, his ability to carry out instructions, and his physical fitness. When the above requisites are relatively equal, the senior qualified employe will be promoted.

* * * * *

H. An employe incapable of performing the duties of a job to which he has been promoted shall not lose his right to the job from which he was promoted nor his seniority rights to promotion to some job for which he is capable.

* * * * *

K. An employe who is transferred—

(Testimony of Alfred George Cody.)

(1) for the purpose of training, or

(2) is promoted to a supervisory capacity, or

(3) is loaned to any other property of the Company or its affiliates temporarily,

shall continue to accumulate seniority in the Pipe Line Division and upon his return will be reinstated therein with the same seniority as he would have been entitled to had he not been so transferred.

* * * * *

M. If an employe becomes incapable of performing his regular work through accident, sickness, or other cause, the Company will, if suitable work is available, provide such work as the employe is capable of performing, if another employe is not thereby laid off or reduced in rate of pay. If on account of illness or temporary physical incapacity, an employe is absent or temporarily engaged in light work, the time spent during such absence or in such temporary employment will contribute towards his Pipe Line Division seniority, but such time shall not be permitted to give such employe seniority advantage over any other employe who at the time such absence or light work began had greater seniority in said Division.

* * * * *

Q. (By Mr. Purver): Mr. Cody, immediately prior to the time you were promoted to a supervisory position in 1948, were you an officer of Local 128? [264]

A. I was.

Q. What position did you hold?

A. Chairman of the Texas Company unit, which

(Testimony of Alfred George Cody.)

made me a member of the Executive Board of Local 128.

Q. Now, by "Texas Company unit," what do you mean?

Mr. Brooks: Mr. Examiner, we will stipulate that by "Texas Company unit" he means what the Exhibit 22 shows it to mean.

We will stipulate that he signed these agreements, where it shows he signed them. The purpose of making this statement, I might say, is a desire to be helpful, and that we might expedite the hearing.

Mr. Purver: I accept the stipulation, and express my gratitude for anything that helps expedite this proceeding.

Q. (By Mr. Purver): Now, you testified that you have taken various leaves of absence for union matters. I direct your attention to General Counsel's Exhibit 23.

Mr. Purver: Mr. Brooks, do you care to stipulate that the leaves of absence that were taken by this witness were taken in accordance with the leaves of absence section of the contract?

Mr. Brooks: I can't stipulate to that.

Q. (By Mr. Purver): I direct your attention to page 19 of General Counsel's Exhibit 23, Article XI, entitled "Leaves of Absence," and ask you whether the leaves of absence you took were in accordance with Article XI. [265] A. Yes.

Q. Can you tell us whether, while you were unit Chairman, you had anything to do with enforcing

(Testimony of Alfred George Cody.)

this contract, which is General Counsel's Exhibit No. 23? A. Yes.

Q. Were the terms of this contract uniformly carried out? A. Yes.

Trial Examiner Scharnikow: What did you do about enforcing that contract?

The Witness: You are asking me?

Trial Examiner Scharnikow: Yes.

The Witness: I was meeting—we had grievances under the contract, and I met with the local management to adjust the grievances, and, if we couldn't adjust it on that level, took it to the higher level.

Trial Examiner Scharnikow: Who were the men from the company whom you saw on these grievances?

The Witness: Generally, in what I call the local level or lower level, was Mr. E. L. Dreyer, superintendent, and Mr. F. A. Jones, and any others that were in there—there were other foremen, I should say, that were in there that weren't the same all the time, but generally those people were there.

Q. (By Mr. Purver): I now direct your attention to Article [266] V on page 12 of General Counsel's Exhibit No. 22, Section 5, entitled "Withdrawal Cards."

When you were made a supervisor, did you, in accordance with Section 5 of this Constitution and By-Laws, obtain a withdrawal card? A. I did.

Q. What were the circumstances of your securing such a card?

A. In conversation with Mr. Dreyer, after I was

(Testimony of Alfred George Cody.)

given the job, he told me that I should get a withdrawal card. I applied for the withdrawal card, and the company still deducted my dues in March, and he again called it to my attention that my dues were still being deducted, and I had to write a letter to the girl over at the L.A. Works office to get her to stop payment of dues, because I already had a withdrawal card. [267]

* * * * *

Q. (By Mr. Purver): Where did you get the pass?

A. The pass was delivered to my home, by Mr. Letson.

Q. How did you come to receive that pass?

A. After I came back off my vacation, I called Mr. Jones, who was my immediate supervisor, and he told me he had a pass for me to do maintenance and safety work and patrol work on the pipeline properties.

Mr. Brooks: I move to strike the answer regarding the purpose for which the pass was granted, on the grounds that no foundation was laid regarding the time and place and the persons present at this conversation.

Trial Examiner Scharnikow: I will overrule the objection, subject to laying a foundation.

Q. (By Mr. Purver): When did you talk with Mr. Jones regarding the pass?

A. Either Thursday or Friday of September—I believe it was the 8th or 9th, 1948.

Q. Do you remember the day you came back from your vacation, what date it was? [276]

(Testimony of Alfred George Cody.)

A. I came back home around the 8th of September.

Q. When did you call Mr. Jones?

A. Either Friday or Saturday; I am not too positive of the date.

Q. A day or two later? A. Yes.

Q. Can you tell us exactly what words Mr. Jones used? A. Yes.

Q. Tell us the conversation.

A. It was by telephone. I called him and told him that I was back and ready to go to work Monday, and he told me that they were having some trouble.

I asked him what the trouble was, and he said there was a strike on. I kiddingly said, "It looks like I can have a longer vacation." He said no, that they had a pass for me to work, and explained to me what the work would be.

Trial Examiner Scharnikow: What did he tell you the work would be?

The Witness: He told me the work would consist of patrolling the pipeline or pumping stations of the company for the purpose of safety.

Q. (By Mr. Purver): Is that the sort of work that you had done immediately prior to your leaving on vacation? A. No.

Q. Did you do that work Mr. Jones asked you to do at that [277] time? A. Yes, sir.

Q. For how long did you do it?

A. Until September 28th.

Trial Examiner Scharnikow: If I may interject just a second, is this the understanding that you told

(Testimony of Alfred George Cody.)

us about having with Jones as to the work you were to do under the pass? You just told us that?

The Witness: Yes.

Trial Examiner Scharnikow: This is the understanding that you spoke about before?

The Witness: Yes.

Q. (By Mr. Purver): Now, will you describe what work you actually did in patrolling the pipeline, from the time that you went back to work on or about September 9th or 10th until September 28th, or until the time of your accident?

A. Yes. Generally my work was to patrol the pipelines,—

Q. Did you patrol the pipelines? A. I did.

Q. How?

A. By automobile—to check on the gates on the various pump stations in the L. A. Basin area, and call in every so often to a dispatcher; and to keep a log book on what I found in my travels around the pipelines and stations, and to keep a record of any leaks that I might find; checking valve boxes [278] to see that there weren't any gates open that were supposed to be closed; and just such things as that.

Q. Was there any oil being pumped through those lines at that time? A. Yes.

Q. Did you report that? A. Yes.

* * * * *

Q. (By Mr. Purver): In all of the lines, did you find oil being pumped through? A. No.

Q. On how many occasions did you find oil was being pumped through the line?

(Testimony of Alfred George Cody.)

A. Once at the Los Alamitos pumping station, and once in Huntington Beach.

Q. And what did you do about it, exactly, in each case?

A. Reported it to the dispatcher.

Q. What is the name of the dispatcher in each case?

A. I don't believe I can answer that.

Q. Is that recorded in your log book?

A. I believe so. [279]

Q. It would give the exact date of each call, is that it? A. Yes.

Q. What did the dispatcher answer to you on each occasion that you said that you found oil running through the lines?

A. In the first instance, the Los Alamitos, he said according to his records there wasn't any pump on the line.

Q. And on the second occasion?

A. That was at Huntington Beach, where another gauger was on top of one of our leases, gauging the oil. I didn't know why he was there, and my foreman directly over me, Mr. Letson, was in the field, and I asked him what was going on; and he said that he didn't know. But that oil was shipped on that day from that tank to some other oil company, and I don't know who. [280]

* * * * *

Q. (By Mr. Purver): Aside from the two instances you found oil was being pumped, did you find that oil was being pumped through the line?

(Testimony of Alfred George Cody.)

A. No, except that I did report a number of tank gates on different leases being opened and the seals being broken, that I couldn't account for, because there wasn't any gauger working.

* * * * *

Q. (By Mr. Purver): Now, as a supervisor, Mr. Cody, exactly what categories of men worked under you? A. Line rider,—

Trial Examiner Scharnikow: "Line rider," is that right?

The Witness: Yes. —tester No. 2, testers No. 1, pumpers No. 1 and 2, and field gaugers. [281]

Q. (By Mr. Purver): Now, what do line riders do?

A. They ride the line for a given distance, and collect and deliver mail and other small articles.

Q. What do pumpers do?

A. They pump the oil from storage in a pump station, through a main line to the L. A. Works Refinery, or to some other company, if the oil has been sold to another company, or on an exchange. They, on some stations, operate dehydrators, which has to do with cleaning of oil, and fire boilers.

Q. And where are these pumps located?

A. Pumping stations?

Q. Yes. Pumping stations.

A. Yes. One at that time, and still is, located on 28th and Orange. One at Los Alamitos; one at Norwalk; one at what is known as Yorba Linda. [282]

* * * * *

(Testimony of Alfred George Cody.)

Q. (By Mr. Purver): Mr. Cody, what do field gaugers do, that is, field gaugers under you?

A. Field gaugers gauge and sample tanks of oil for shipment from either the Production Department or, in cases of buying from some other companies, make out run tickets which show what the high gauge and low gauge of the tank was; generally shows the barrels—the strappings of the tank will indicate how many barrels were shipped out of high gas and low gas—and see that the tank is sealed off from any incoming oil before they ship it. There is a number seal on the suction that has to be broken and another one put back on after the shipment has been made.

They are to make out and sign a run ticket, and have some one of the producing pumpers or some other company's gauger witness these things are factual.

Q. What does a gauger do physically in gauging?

A. He drops a tape with a plumb bob on the end of it, down into the oil until he can just barely touch the bottom, brings the tape up and reads it for how many feet and inches [285] there are on it, and even eighths of inches in many tanks, and the temperature of the tank, to find out what the temperature on the tank is, then samples the gas.

By sampling it, The Texas Company used a 3-foot barrel sample that they generally sample from the top of the oil to the BS&W level of the oil, which is established by other means.

Q. What do you mean by "BS&W"?

(Testimony of Alfred George Cody.)

A. Bad stuff and water that might be in the oil. [286]

* * * * *

Q. (By Mr. Purver): Between the time you went back to work and September 28, was there any oil pumped through the pipelines that you patrolled?

A. Yes.

Q. Other than the two occasions you mentioned?

A. No. I don't know the answer to that.

Q. How did you know that oil was being pumped on those two occasions?

A. Well, because I heard it in one instance——

Q. Describe what you mean by that.

A. I was at the Los Alamitos pumping station and heard the oil coming over from a pump over into a line leading out into a storage tank in the Los Alamitos pumping station.

Then the other one I saw, because they had the pump on the lease.

Q. Now, the pump that was on, did you see a gauger there? A. Not ours.

Q. Well, did you see a gauger there?

A. Yes. [289]

* * * * *

Q. (By Mr. Purver): Was the gauger a man that worked under you prior to the strike?

A. No, sir.

Q. Had you ever seen him before, that gauger?

A. Yes.

Q. Do you know his name? A. No.

(Testimony of Alfred George Cody.)

Q. Where had you seen him before?

A. At the Huntington Beach lab.

Q. Of that company?

A. I believe it is Cal Tech, I am not sure of that.

Q. From the period you went back to work until September 28, did you have any line riders working under you? A. No.

Q. Any pumpers? A. No.

Q. Testers? A. No.

Q. Field gaugers? A. No.

Q. Now, what is the purpose, if you know, of the pipelines?

A. It is for conveyance of oil from production leases either owned by the company or other companies; it is a gathering system for gathering the oil and transporting that oil, either [290] into storage into the Pipeline Department, or to deliver that same oil to the L. A. Works Refinery for further processing or, on some occasions, they use the lines for transmittal of other companies' oil through our lines, The Texas Company's lines, to various other companies.

Q. Where were these lines located that you were in charge of?

A. In the L. A. Basin Area.

Q. The ones you were in charge of?

A. Yes.

Q. Could you make that any more specific?

A. The main lines run from the refinery south to the Wilmington field, or the properties of the E. B. Hall Company, or better known as the Union

(Testimony of Alfred George Cody.)

Pacific Railroad Company; they go east as far as the Yorba Linda pumping station, or even farther east than that, out to the leases in the Yorba Linda field; they go north to Whittier or Montebello field; and they go west to the Redondo field.

Q. Did you, during September, ride all of these lines?

A. Not all in one night, but covered all of the lines except the Redondo end of them, as rapidly as I could.

Q. Were you in a position to see whether the oil lines were in operation? A. Yes.

Q. Were they in operation during that time?

A. Parts of them were. [291]

Q. Other than the two instances that you testified about? A. No.

Q. Now, in the conveyance of the liquids through the pipe, as you described it, at what time are samples taken?

A. What time are samples taken?

Q. Yes. Prior to, during or after the oil is in the pipeline? A. Before.

Q. Before. And what about tank temperatures?

A. Before.

Q. And what about the securing of the gauges?

A. Before and after.

Trial Examiner Scharnikow: Then all of this would be done at the field end of the pipe?

The Witness: I don't understand.

Trial Examiner Scharnikow: Maybe I am wrong.

(Testimony of Alfred George Cody.)

I understand that these pipes run generally between the refinery and the oil fields?

The Witness: That is right.

Trial Examiner Scharnikow: Now, this sample taking and the temperature taking, is that all done at the field end of the pipe, the oil field end of the pipe?

The Witness: It is done at the place of purchase of the oil.

Trial Examiner Scharnikow: As distinguished from the [292] refinery——

The Witness: Yes.

Trial Examiner Scharnikow: ——or the storage end?

The Witness: Yes.

Q. (By Mr. Purver): In order to do your line riding, did you cross picket lines?

A. The only picket line that I—yes.

Q. Were there pickets at some of these locations?

A. Yes.

Q. That you rode by? A. Yes.

Q. Now, the gauge sampling, taking of tank temperatures, is that done each time before oil is pumped through the line? A. Yes.

Q. That is, as part of the procedure, each time a new batch of oil goes through these processes are carried out? A. Yes.

Q. Now, the Yorba Linda station, what form of power was used to operate the pump?

A. Steam.

(Testimony of Alfred George Cody.)

Q. What would it be necessary to do to prepare that station for pumping oil?

A. At that time, after they had been shut down for 24 or 25 days, you would have to check all of the boilers; and, in order to start pumping, you would have to fire the boilers, [293] and generally get the station ready for operations.

Q. Are there storage tanks at Yorba Linda station? A. Yes.

Q. You testified yesterday that you were ordered to do certain things, which you refused to do. What would you have had to do had you carried out the orders that were given to you on September 28?

A. Gauge and sample the tanks at the Yorba Linda pumping station; and I don't know what they meant by getting the pumping station ready to run. That was a part of the order we didn't even discuss.

Q. You don't know, then, whether it would have included firing of boilers and checking the boilers, do you?

A. No, I didn't discuss that with them, what they meant by it.

Q. To your knowledge, based on your riding the line at that time, was anyone at all working at the Yorba Linda station on the 28th of September?

A. No, not to my knowledge.

Q. Now, on the 28th of September, you had a withdrawal card from the union; is that correct?

A. Yes, sir.

Q. Did you ever return that withdrawal card to your union? A. I did.

(Testimony of Alfred George Cody.)

Q. When? [294]

A. September 28, 1948.

Q. To whom did you return it?

A. To the president of the local union.

Q. What did you do at that time?

A. Deposited my card and put myself in good standing with the union.

Q. Did you get a full membership card then?

A. Yes, sir.

Q. Do you have it with you?

A. My card now?

Q. Your membership card. A. Yes, sir.

Q. Is it the same card that you received on September 28, 1948?

A. No, that is a card that is issued every month when people pay their dues.

Q. It was a card similar to this, is that it?

A. Yes.

Mr. Brooks: May I see the card?

Mr. Purver: Oh, yes; certainly. I do not intend to burden the record by offering that in evidence.

Q. (By Mr. Purver): On the card are the letters "WCD 9-28-48." What does that mean?

A. That my withdrawal card was deposited at this local union on that date. [295]

Trial Examiner Scharnikow: Do you want that identified?

Mr. Brooks: I will stipulate the card shows what Mr. Purver says it does.

Q. (By Mr. Purver): What did you do then?

A. Joined the strikers. [296]

(Testimony of Alfred George Cody.)

Q. Specifically, what did you do?

A. My first job was—the chairman of The Texas Company unit at that time——

Q. Who was that?

A. Odell Clayton.

Trial Examiner Scharnikow: What was that?

(The answer was read.)

The Witness: Clayton came into the union office at 4120 Long Beach Boulevard and asked me if I would address the meeting of The Texas Company unit employees, which was being held that afternoon, September 28, 1948, in the local hall. I told him I would and did.

Q. (By Mr. Purver): You referred to a job. Were you a hired employee of the union at that time?

A. No.

Q. Did you address the membership that evening?

A. That afternoon.

Q. Did you engage in any other activity on behalf of the union thereafter? A. Yes.

Q. What did you do?

A. I helped to maintain the picket lines.

Q. When and where?

A. At all of The Texas Company holdings.

Q. What did you do specifically? Did you walk the line or [297] patrol the line in a car?

A. No, I only walked the picket lines one evening at the refinery.

Q. What did you do to maintain the line?

A. To help maintain the line I made a trip to

(Testimony of Alfred George Cody.)

get funds for the strikers, talking to different locals in the country to get them to contribute moneys to the strikers here in California.

Q. Where did you go?

A. To Port Arthur, Texas, to New Orleans, and the locals that are in those areas.

Q. Who paid the expenses of those trips?

A. The Oil Workers Union. [298]

* * * * *

Q. Do you know whether your speech was published or publicized in the union paper?

A. Yes.

Q. What about your trip to Texas and New Orleans and so on?

A. I don't think that was publicized.

Q. Did you make any other speeches?

A. Yes.

Q. Any in the Los Angeles area? A. Yes.

Q. Where? A. El Segundo Refinery.

Q. Of The Texas Company?

A. Of the Standard Oil Company. [299]

* * * * *

Q. What other activities did you engage in on behalf of the strikers?

A. Well, in many instances—and I have spent all of my time except that time I told you about in speeches, in the local office. Every time a call would come in that there was disruption on the picket lines of any kind of not only The Texas Company, but other companies, I would immediately go out there to see what the trouble was, and if it was something

(Testimony of Alfred George Cody.)

that—something to harm or to create something to harm the employees that were on strike, I did everything I could to get the thing removed.

Q. Did you talk with company officials on any such occasions?

A. After I went out on strike?

Q. Yes, in providing—fixing up troubles on the picket line? A. No.

Q. Did you have any feelings or did you talk with any Texas Company officials during this time?

A. Not until after the strike settlement agreement.

Q. Did you take part in the strike settlement agreement? [300] A. No.

Q. When was the first time you communicated with any Texas Company officials?

A. November 4th, 1948.

Q. And where was that?

A. On the 13th floor of The Texas Company Building.

Q. Where?

A. 929 South Broadway, Los Angeles.

Q. And with whom did you speak?

A. Mr. O'Connor, Mr. B. O. O'Connor.

Mr. Brooks: Mr. Examiner, in order that the record will be clear, we will stipulate that Mr. B. O. O'Connor is Manager, Refining Department, Pacific Coast Division, of The Texas Company.

Mr. Purver: Thank you.

Q. (By Mr. Purver): Describe your conversa-

(Testimony of Alfred George Cody.)

tion with Mr. O'Connor. Tell us first how you came to see Mr. O'Connor.

A. Mr. Carl Mattern, District Director of District No. 3 of the Oil Workers International Union, who was out here to help process the strike, told me at a meeting of The Texas Company unit in which he brought back a proposed settlement of the strike and the contracts for certain groups of the employees for that ratification, he told me that after his meeting with the company that afternoon that he had talked to Mr. O'Connor and Mr. O'Connor—

Trial Examiner Scharnikow: You are not offering it as to the truth of the statement but as to the fact of the statement?

Mr. Purver: That is correct.

Trial Examiner Scharnikow: I will overrule the objection.

Mr. Purver: Merely trying to find out how the witness got to Mr. O'Connor's office.

Mr. Brooks: May I inquire, Mr. Examiner, if it is important in the minds of the General Counsel in regard to the issues of this case as to whether Mr. O'Connor invited him to come to see him?

Mr. Hackler: Usually when you say two people meet, in order to understand it it is well to know whether they passed each other on the sidewalk, whether it was prearranged, what was the purpose, or something of that kind in order to understand it.

Trial Examiner Scharnikow: I understand that what we have so far is for the purpose of showing

(Testimony of Alfred George Cody.)

that Mr. Mattern told the witness that Mr. O'Connor wanted to see him.

Q. (By Mr. Purver): Now, when you saw Mr. O'Connor, what did you say to Mr. O'Connor?

A. I asked him for my job back.

Q. Describe your conversation with Mr. O'Connor.

A. Well, it was quite a lengthy one.

Q. Tell us as concisely as you can. [303]

A. He told me when I first came in that I had made a mistake. I don't think I can remember all of it, but I will remember what I can of it.

I told him that maybe I had made a mistake as a foreman, but that I couldn't see why all the rest of the employees of The Texas Company could go back to work under his management, and that was a true statement—all of them went back to work that wanted to go back to work.

We had a long talk about my work. He told me that he wanted me to know that the thing that I had to settle was with my superintendent, Mr. Dreyer.

He told me that if I was interested, that he would make a date for me to meet Mr. Dreyer and he did make a date with me to meet Mr. Dreyer, and as I was going out the door he patted me on the shoulder and said—prior to that time he told me that I would probably get some kind of a job back; he wasn't sure whether it would be my supervisor's job, whether it would be a job in the gauging department, or whether it would be another supervisor's job in the

(Testimony of Alfred George Cody.)

valley, and as I was leaving—and I know there is much more to this conversation than what I am saying—he patted me on the shoulder and told me not to worry, that I would get a job of some kind.

Q. You referred to a meeting with Mr. Dreyer being arranged. Did you meet with Mr. Dreyer?

A. Yes.

Q. How did you come to meet Mr. Dreyer?

A. By the arrangements that O'Connor made with Mr. Dreyer. He said he was too busy because of just settling the strike to meet me at that time, and set a date for me to meet him Monday, November the 8th.

Q. Did you meet Mr. Dreyer on November 8th?

A. Yes.

Q. Where?

A. At the pipeline headquarters in the Los Angeles Works Refinery.

Q. That is near Wilmington? A. Yes.

Q. And who was present there?

A. Mr. Dreyer and Mr. F. A. Jones.

Mr. Brooks: Mr. Dreyer's title, for the record, is Superintendent, Pipeline Division.

Q. (By Mr. Purver): Will you describe the conversation you had with Mr. Dreyer?

Trial Examiner Scharnikow: Is this a convenient place to break for lunch? It is just 12:00 o'clock now.

Mr. Purver: Yes.

Trial Examiner Scharnikow: We will recess until 1:30.

(Thereupon, a recess was taken until 1:30 o'clock p.m.) [305]

After recess.

(Whereupon, the hearing was resumed, pursuant to the recess, at 1:30 o'clock p.m.)

Trial Examiner Scharnikow: On the record.

GEORGE CODY,

a witness called by and on behalf of the General Counsel, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued)

Mr. Purver: The last question directed to this witness was to have him describe his conversation with Mr. Dreyer, and the date, I think, was fixed as of——

Trial Examiner Scharnikow: November 8th.

The Witness: In this meeting I asked for my job back as a supervisor and negotiated pretty hard for my job back as a supervisor. There was quite a long discussion. I don't remember in this meeting of Mr. Jones saying anything. Mr. Dreyer done all of the talking, and myself.

Q. (By Mr. Purver): What was the substance of your conversation?

A. About being returned to my job as a supervisor.

Q. Do you remember what you said to Mr. Dreyer?

(Testimony of Alfred George Cody.)

A. Yes, I told him that I just couldn't do the work that he asked me to do and that it was a pretty hard decision for me to make and tell him that I couldn't do the work and that [306] I was there because I had been up to see Mr. O'Connor, and that Mr. O'Connor told me I had to come down and make amends with him.

Q. When you talked about the work that you couldn't do, what work were you referring to?

A. The assignment that they gave me on September 28th.

Q. Proceed. What did Mr. Dreyer say?

A. He didn't have too much to say to me at that particular meeting.

Q. What did he say?

A. He told me that he would think over what I had said and that he would give me an answer.

Q. Just a moment. Was that all to that conversation?

A. No, there was lots more to it, but I don't know anything of value.

Q. Tell us what you remember of that conversation.

A. I can say this, that he asked me—even then there was still parts of this company on strike and the Richfield Oil Company was on strike and the Union Oil Company was on strike—and he asked me that if he did give me a job back as a supervisor, would I go through those picket lines to gauge on oil or perform any duties he might assign me in those plants.

(Testimony of Alfred George Cody.)

I told him I thought that that was awfully unfair to ask that of me, no, I couldn't do it on the 28th and I couldn't do it now. [307]

Q. Was that the substance of the whole conversation? A. I think so.

Q. Now, what were the arrangements that were left between you and Mr. Dreyer?

A. That he would give me an answer within a week.

Q. How?

A. I didn't know how he was going to answer.

Q. Did you, in fact, receive an answer from Mr. Dreyer within a week? A. I did.

Q. How?

A. On the following Thursday——

Q. What date would that be?

A. The 11th, November 11th. I believe it was November 11th.

Q. That is what the calendar shows.

A. In the morning, I received a telephone from Mr. Dreyer. He stated that he was ready to give me his answer.

I asked him what it was. He said that his decision was still the same as it was on September the 28th, and that he wished me much success at finding a job elsewhere.

Q. Did you make any other efforts——

A. I just thanked him and hung up the phone.

Q. Did you make any effort at that time to get employment from Mr. Dreyer?

(Testimony of Alfred George Cody.)

A. At that time? [308]

Q. On the telephone? A. No, sir.

Q. Did you make any effort subsequently to get reemployment or employment at The Texas Company?

A. That very day, I drove up to Los Angeles to see Mr. O'Connor. It was a holiday, and I hadn't even recognized it was one. The office building was closed, and I went over to where the union had set up its headquarters here in Los Angeles, and told Carl Mattern what Mr. Dreyer had said; and he said, "I believe I can do something about it," and he called The Texas Company office and couldn't get Mr. O'Connor in the office.

He called Mr. O'Connor's home, and couldn't get him at home.

He told me to keep on trying to get Mr. O'Connor, and I didn't get in contact with Mr. O'Connor until the following Monday.

Q. Would that be the 15th of November?

A. I believe that is right. Yes.

Q. Did you get in touch with Mr. O'Connor?

A. Yes, by phone, and made an appointment to come up to his office and talk with him.

Q. For when was that appointment?

A. In the morning.

Q. Of what day? [309]

A. November 15th.

Q. Oh, you went to see him the same morning you telephoned? A. Yes.

Q. And did you meet Mr. O'Connor?

(Testimony of Alfred George Cody.)

A. I did.

Q. Where? A. In his office.

Q. That is on Broadway, in Los Angeles?

A. Yes.

Q. And what was the substance of the conversation you had with Mr. O'Connor on the 15th of November?

A. I told him that I had been to see Mr. Dreyer; I told him of Mr. Dreyer's answer to me. And he told me he thought maybe, from his conversation in talking with Mr. Dreyer, that I was a little bit too cocky when I went and asked for my job back.

Q. Was there anybody else present at this conversation? A. No, sir.

Q. Proceed.

A. We had a long discussion again, in which Mr. O'Connor asked me if I was sure that I wanted to work for The Texas Company; and I told him that I was.

He said, "My reasons for asking that are I think you have a lot to contribute to organized labor. Maybe you should make your career out of that." [310]

I told him about the family life of a representative of this union, who actually doesn't have any home life; and he asked me what I wanted him to do, and I asked him if he could make an arrangement so we could both talk across the table with him at the same time, with Mr. Dreyer, myself and he; and he said, no, he thought that this time I should make my amends—I don't know whether that is the word

(Testimony of Alfred George Cody.)

he used or not, but he inferred that—with Mr. Dreyer.

I told him that I recognized the position that he was in. He told me, yes, he knew that he could put me to work; if he so ordered, that Mr. Dreyer would have to put me to work, but he didn't think that was the right way to do. He thought that I could go down and make amends with Mr. Dreyer.

He asked me if I wanted him to make another appointment for me. I said, yes, I would rather have it the other way, but if that was the way he wanted it was good enough for me, and he made another appointment with Mr. Dreyer for me, to meet him the next afternoon, which was the 16th.

I met with Mr. Dreyer on November the 16th.

Q. Where?

A. At the local office on Highway 101 in Wilmington.

Q. Was anybody else present?

A. Mr. F. A. Jones. I approached the matter in an entirely different light and told him then that as a foreman I had [311] probably made some mistakes. I told him that I was there now asking for a job with The Texas Company. I asked him what he meant in our earlier conversation when he made reference to a pump job. He told me that he just picked that out of the sky as a classification, that it could have been laborer or any other classification.

Q. I think at this point it would be well for you to clarify what that has reference to. You said in

(Testimony of Alfred George Cody.)

the prior conversation you were talking about a pumping job?

A. He mentioned the word "pumper" to me in the previous conversation, and I ignored it at that time.

Q. Do I understand you that he offered you a job as a pumper?

A. No. He just mentioned the word "pumper" and I didn't discuss it.

Q. When was that?

A. In the first meeting.

Q. All right, go ahead.

A. After we got through discussing me wanting my job back or a job back, Mr. Dreyer said, "Well, George, if I have to give you an answer today, it will be the same as on September 28th, but I will take it into consideration, the things that you have said to me, and I will give you an answer, and he did answer me.

Q. Did he give you an answer at the time of that conversation? [312]

A. No, sir.

Q. Did Mr. Jones take part in the conversation?

A. He asked me one or two questions and I don't even remember what they were.

Q. Now, can you describe more specifically how you asked for a job, what words you used?

A. I just asked for a job back.

Q. Do you remember what words you used?

A. I asked that, I said I would like to have any job back for The Texas Company, that I was past 40 and had found that at that age you couldn't get

(Testimony of Alfred George Cody.)

jobs as easy as when you were 21 years old, and in fact I hadn't found a place as yet that I could go back to work, and I told him I would certainly like to have a job in the pipe line department.

Q. You didn't specify which job. Is that right?

A. No.

Q. What was Mr. Dreyer's answer?

A. He answered me the following Friday and that was again by telephone.

Q. When you left at the time of November 16th, what was the arrangement as far as your getting an answer was concerned?

A. That he would call me.

Q. At your home? [313]

A. That he would notify me. He didn't say he would call me.

Q. Did he notify you? A. Yes.

Q. Where? Home? A. Yes.

Q. And Friday, that would be the 19th of November. What did he say?

A. He said that his decision was still the same as it was on September 28th and that again wished me much success in finding employment elsewhere.

Q. All these conversations were in good spirits, were they not? There were no arguments?

A. Not as far as I was concerned.

Q. What did you do at that time?

A. I called Mr. O'Connor on the telephone.

Q. When?

A. That same day in the afternoon.

(Testimony of Alfred George Cody.)

Q. What time of day did you get the telephone call from Mr. Dreyer? A. In the morning.

Q. You called Mr. O'Connor in the afternoon?

A. Yes.

Q. What did you say to him?

A. I told him what had happened and asked him if he would [314] make a date again, because I thought he was getting double talk, and the only way he could determine whether he was or not was to talk to both of us across the table. I asked him if he would make a meeting with Dreyer and myself and he said that he would.

Trial Examiner Scharnikow: He said that he would?

The Witness: He said he would.

Q. (By Mr. Purver): Did Mr. O'Connor arrange such a meeting? A. No.

Q. Did you hear from Mr. O'Connor after that conversation on the telephone? A. No.

Q. Was anything else said during the course of that conversation on the phone?

A. There were other things said, but I don't remember all of it.

Q. Do you remember any of it?

A. No, I don't.

Q. Do you remember whether there was any further discussion regarding your request for a job?

A. I asked him if he was satisfied with the answer that Mr. Dreyer gave me, and he told me that he wasn't over the telephone.

Trial Examiner Scharnikow: That he what?

(Testimony of Alfred George Cody.)

The Witness: That he was not. [315]

Q. (By Mr. Purver): Now, how were the arrangements left about making a date for another meeting? A. That he would call me.

Q. Did Mr. O'Connor call you? A. No.

Q. Did you call Mr. O'Connor again?

A. I called his office and found that he had left for New York, and in order to establish a record I wrote to Mr. O'Connor, I wrote him a letter stating all of the things as I understood them and asked him if on his return——

Trial Examiner Scharnikow: Have you a copy of the letter?

Mr. Purver: Yes, sir. I will ask the reporter to mark for identification as General Counsel's Exhibit No. 25 a two-page document which purports to be a copy of a letter dated December 16, 1948, addressed to Mr. B. O. O'Connor, Texas Company, and bearing the original signature of George Cody.

(Thereupon the document above-referred to was marked General Counsel's Exhibit No. 25 for identification.)

Q. (By Mr. Purver): I hand you what has been marked for identification as General Counsel's Exhibit 25, and ask you whether it is a true copy of the letter that you sent to Mr. O'Connor on December 16, 1948? A. Yes, sir.

Q. Did you ever receive an answer to this letter?

A. No, sir.

(Testimony of Alfred George Cody.)

Mr. Purver: At this time I wish to offer in evidence [316] General Counsel's Exhibit No. 25.

Mr. Brooks: May I examine the witness briefly on voir dire?

Mr. Purver: I have no objection.

Trial Examiner Scharnikow: You may.

Mr. Brooks: Mr. Cody, is this a carbon copy of the letter you wrote to Mr. O'Connor, as you have testified, on December 16th?

The Witness: I don't know whether it is a carbon, or whether it is a copy that was made from a letter.

Mr. Brooks: Do you know——

The Witness: I know it is a true copy of the letter.

Mr. Brooks: Well, how do you know that?

The Witness: Because I was the one that wrote it.

Mr. Brooks: You typed this yourself?

The Witness: No, I had a girl type it.

Mr. Brooks: Well, did you make a carbon copy of the letter you sent to Mr. O'Connor?

The Witness: Yes.

Mr. Brooks: And did you type the letter yourself?

The Witness: No.

Mr. Brooks: Where was it typed?

The Witness: At the local hall.

Mr. Brooks: Do you have a copy of the carbon of the original letter? [317]

The Witness: I can check and see.

Mr. Hackler: I understand——

(Testimony of Alfred George Cody.)

Trial Examiner Scharnikow: Do you want this on the record?

Mr. Hackler: No.

Trial Examiner Scharnikow: Off the record.

(Discussion off the record.)

Trial Examiner Scharnikow: On the record.

Mr. Brooks: Mr. Cody, you have handed me a carbon copy, or what appears to be a carbon copy of a letter, and I have examined it in comparison with the other one, which has now been marked General Counsel's Exhibit 25 for identification. It appears to me that the carbon is a carbon of the one that has now been marked.

Would you agree with that, after examining it? I notice, for example, the last word on each line is identical with the last word on each line of the carbon.

The Witness: Well, I won't say for sure, because I wrote the original—had the original letter written to Mr. O'Connor and kept a copy of it myself, and then had these two copies made for the Board and other people that were interested in my case.

Mr. Brooks: It is your testimony, then, as I understand it, that this letter, which has been marked General Counsel's Exhibit 25 for identification, in the contents is identical [318] with the letter you wrote to Mr. O'Connor on December 16th?

The Witness: Yes.

Mr. Brooks: Even though it is not a carbon copy

(Testimony of Alfred George Cody.)

of the original letter which was mailed; is that right?

The Witness: Yes.

Mr. Purver: I think the record shows that I have already offered General Counsel's Exhibit 25 in evidence.

Mr. Brooks: Mr. Examiner, I do not object to the materiality of the letter. I will not object to it going into evidence, subject to, of course, our checking the files of the company for the original; and then we will, if it is different, put evidence on to that effect and produce the original.

Just to make that clear, I think the foundation is adequate, but I don't want to agree to the statement of facts. I don't think my statement is necessary, but I want to be sure we don't misunderstand each other.

Trial Examiner Scharnikow: Of course, any exhibit is subject to rebuttal.

Mr. Brooks: That is right.

Trial Examiner Scharnikow: You have no objection on the basis of the witness' testimony authenticating this exhibit?

Mr. Brooks: That is right. [319]

Trial Examiner Scharnikow: Or the one sent by him to the company?

Mr. Brooks: That is right.

Trial Examiner Scharnikow: All right. Under the circumstances, I will admit General Counsel's Exhibit 25 in evidence.

(Testimony of Alfred George Cody.)

(The document heretofore marked General Counsel's Exhibit No. 25 marked for identification was received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 25

True Copy

2768 Main Avenue
Long Beach, California

Mr. B. O'Connor
The Texas Company
Refining Department
Pacific Coast Division
929 South Broadway
Los Angeles, California

December 16, 1948

Dear Mr. O'Connor:

As you know, for the past few weeks you have had before you the question of my reinstatement with the Company. On November 4, 1948, a strike settlement agreement was executed between the Company and the Oil Workers International Union. On this same day I met with you and you arranged a meeting for me with Superintendent E. L. Dreyer for Monday, November 8, 1948. I met with Mr. Dreyer on that date and we discussed my reinstatement with the Company. Mr. Dreyer informed me that he would give his answer on November 11, 1948.

On November 11, 1948, Mr. Dreyer called me at my home and informed me that he would not reinstate me. I attempted to contact you immediately,

(Testimony of Alfred George Cody.)

but November 11, 1948 was a holiday and I did not reach you until November 15, 1948. At that time, I talked with you, and you again arranged a meeting for me with Mr. Dreyer for the afternoon of November 16, 1948. I met with Mr. Dreyer at that time and he informed me that he would give me his answer on November 19, 1948.

On November 19, 1948, Mr. Dreyer called me and informed me that he would not reinstate me with the Company. I then called you and we discussed the situation over the phone. I informed you of Mr. Dreyer's decision and asked you if that was satisfactory to you. You told me that it was not, and that you would arrange a meeting with yourself, Mr. Dreyer and myself in your office. However, you informed me that Mr. Dreyer was going up North and would not be back until the afternoon of November 24, 1948. Inasmuch as November 25, 1948 was Thanksgiving, you were not sure that you would be able to arrange any meeting for November 26, 1948. You, therefore, said that you would call me after you had succeeded in arranging a meeting.

I did not hear from you, so I called you Tuesday, November 30, 1948. You told me that Mr. Dreyer was coming downtown that day and that you would talk with him and let me know on December 1st or 2nd when we could get together. I received no answer from you, so on Monday, December 6, 1948, I again called your office and was told that you had left for New York and would be back December 21 or 22, 1948.

(Testimony of Alfred George Cody.)

I believe you must realize that this leaves me sort of "hanging in the air". I know that you must be very busy and that pressing matters must have prevented you from arranging the meeting as you told me you would. I appreciate your efforts on my behalf, and hope that the entire matter will be settled in the near future.

Will you kindly call me when you return so that I may know just what my status is.

Respectfully yours,

/s/ GEO. CODY

Q. (By Mr. Purver): You just testified that you received no answer to your letter of December 16th, which is General Counsel's Exhibit 25 in evidence. Did you communicate with Mr. O'Connor thereafter?

A. Yes.

Q. When?

A. Some time after the first of the year.

Q. How long after? A. Soon after.

Q. And how did you communicate with him?

A. By telephone.

Q. Did you get to talk with him?

A. Yes.

Q. And what was the conversation?

A. I made an appointment and met with Mr. O'Connor again.

Q. When was that? [320]

A. Either the next day or within a day or two after I made the telephone appointment.

(Testimony of Alfred George Cody.)

Q. That would be some time in January, 1949?

A. The early part.

Q. Will you give us the substance of that conversation, after telling us where it was and who was present?

A. Mr. O'Connor was the only one present, and it was at his office again, on Broadway, in Los Angeles.

Q. What was the substance of that conversation?

A. I asked him—told him that I didn't understand why I couldn't get a job back. He told me that I had to make amends with my superintendent. He said that I could go see Mr. Dreyer again, that—I would like to have it stated that all of these things are over a year ago, and it is hard to remember all of the different conversations without some kind of notes.

Q. Did you make any notes at that time?

A. Yes, I kept a calendar, with each date that I contacted either Mr. Dreyer or Mr. O'Connor, and have displaced it some place. I had it up to the time I wrote that letter and sometime on after, and might be able to find it. If I can, I can establish those dates on that.

Trial Examiner Scharnikow: Can you hear?

Mr. Brooks: Yes.

Trial Examiner Scharnikow: Speak louder. [321]

Mr. Brooks: Just a moment. Is it planned to produce those notes?

Mr. Purver: The witness has just said he misplaced them.

(Testimony of Alfred George Cody.)

Mr. Brooks: Oh, he has misplaced them.

Mr. Purver: And we have never seen them.

Q. (By Mr. Purver): What was the substance of the rest of the conversation with Mr. O'Connor?

A. Well, it had to do with me getting my job back, or getting a job back; and he told me that he might make arrangements for me to go into the refining department through Mr.—I don't know his initials—Bill Ryan, who was a superintendent.

Q. Did he offer you a job? A. No.

Q. Proceed.

A. He did say something about he might be able to work out some kind of a way of getting me on a foreign job.

Trial Examiner Scharnikow: On a foreign job?

The Witness: On a foreign job.

Q. (By Mr. Purver): You mean out of the country?

A. Yes. I asked if that couldn't lie in abeyance, and I was going to do everything I could to get a job back here, and if I couldn't get it back, couldn't I come back and talk to him about that at a later date; and he said [322] his door was always open if I wanted to talk to him.

Q. Was there any discussion between you and Mr. O'Connor regarding seniority at this time?

A. The only thing I can remember—and I don't know whether it was in the first, second or last meeting with Mr. O'Connor—was mentioning the fact that a person who had went to work for a company when he was 21 years old and worked for them nearly

(Testimony of Alfred George Cody.)

21 years, and came to the age of 42, that that was a long time to work for a company and then get dismissed the way I was dismissed.

Q. Who said that? A. I said that.

Q. Do you remember at what meeting you said that?

A. He told me 21 years was a long time for any man to work for a company.

Q. Do you remember at what meeting that was?

A. No, I don't.

Q. In your conversation with Mr. Dreyer, was there any discussion about seniority? And I will ask you if you remember your first conversation with Mr. Dreyer, when you asked for a supervisory job back.

A. I told him that I had worked through all of the steps leading up to the top job under the contract; that I had qualified myself for some jobs by going to night school to get the additional training that I needed for the job, to be [323] prepared for the job.

I also told him that in other cases there had been people set back for making mistakes, and at the time they were told that the labor gang was good as they would ever get; that after some time back in a lower classification or in a roust-about classification, that we eventually got those people out of those jobs, back up into the regular line of progression of any of the other employees. I also said that it seemed to me like if I had made a mistake as a foreman, and I admitted as a foreman I did make a mistake,

(Testimony of Alfred George Cody.)

that that was the supreme penalty, to my knowledge that they had never done that to anyone, and named some specific cases to him where people had been set back for various things they had done on the job, and then were again put in line of progression by a committee or by his own actions; and I thought it was quite a severe penalty to discharge a person clear out of the company for refusing to do work such as he had assigned me during the strike period. [324]

He told me that they didn't have any complaint against my work as an employee. In one of those conversations, I think this is important, at least to me——

Q. I am still talking about the first conversation you had with Mr. Dreyer.

A. That was on the second conversation.

Q. You mean the conversation of November 16th?

A. Yes.

Mr. Brooks: Mr. Examiner, may we have the question to the last answer, and I will explain? I was under the impression the witness was testifying concerning his conversation with Mr. O'Connor and I am now led to believe that the last several sentences have related to a conversation he had with Mr. Dreyer.

Mr. Purver: That is right.

Mr. Brooks: I would like to know where we are.

Trial Examiner Scharnikow: Let the witness tell us.

Q. (By Mr. Purver): All of this conversation has related to whom and when did it occur?

(Testimony of Alfred George Cody.)

A. The things I was talking about last was the conversation with Mr. Dreyer in his office; I believe the second meeting.

Q. Now, when you asked for a job did you condition it upon getting seniority back?

A. No, sir.

Q. Did you specify what job you were asking for? [325]

A. No, sir.

Mr. Purver: No further questions of this witness.

* * * * *

Cross Examination

Q. (By Mr. Brooks): Mr. Cody, I want to ask you one or two questions about this letter, which is General Counsel's Exhibit 25. This letter was written by you, as I understand, [326] when your notes were available which you referred to?

A. Yes.

Q. And I take it that in writing this letter you set forth the various efforts that you had made to obtain reemployment with The Texas Company?

A. Yes.

Q. Is it your testimony that this letter correctly reflects the efforts which you made to obtain reemployment with the company, up to the date that it was written?

A. Yes.

Q. You testified, on direct examination, that your leave of absence for union business was granted in accordance with and pursuant to Article XI of the Agreement, which is General Counsel's Exhibit 23; is that correct?

A. Yes.

Q. Was that your testimony?

A. Yes.

Q. This Agreement is the one which was ex-

(Testimony of Alfred George Cody.)

ecuted on the 9th day of May, 1947. In view of that fact, of course, you do not testify, do you, that the 1941 leave of absence was taken pursuant to this contract? A. No.

Q. That leave of absence in 1941, as a matter of fact, extended in total over about a year and a half, did it not?

A. I believe that is right. [327]

Q. It was a series of leaves, wasn't it? It was continuous, but there were several leaves, one leave followed another? A. Yes.

Q. Now, I want to direct your attention to your testimony on direct examination, regarding the withdrawal card in the union. That conversation occurred, as I recall, at the time just before or about the time you were made a foreman; isn't that right?

A. Yes.

Q. Do you remember that conversation rather clearly at this time? A. I believe so.

Q. When did you first learn, and how did you first learn, that you were to be promoted into a supervisory position?

A. I am not too sure as to the date, but it was around the 9th, or in that part of the month, of January of that year.

Q. You had a conversation with Mr. Dreyer, did you not, at which time he told you that he was planning to promote you to the position of assistant foreman, somewhere in the latter part of January, is that right?

A. In the first part of January.

(Testimony of Alfred George Cody.)

Q. First part of January?

A. As I recollect.

Q. You did have such a conversation with Mr. Dreyer? A. Yes. [328]

Q. Where did that take place?

A. Mr. Dreyer's office.

Q. Was anyone else present?

A. No, I don't believe there was. I am sure there wasn't.

Q. You remember that conversation?

A. Partially.

Q. Tell me what occurred or what was said in that conversation. [329]

* * * * *

Q. (By Mr. Brooks): Now, in order that we can clear the record, I will restate the question for your benefit, Mr. Witness. I want you to tell me what was said in the conversation you had with Mr. Dreyer in January of 1948, at which time he told you for the first time that he was going to make you a supervisor.

A. He told me that he was going to make a job of supervisor for me; it was a new job and didn't even have a name for it at that time. He said that due to my experience in the gauging department and the laboratory and in the operations of the company, he thought I would be valuable to them as a foreman to make some checks on Paloma crude runs that was shipping oil which is a high gravity oil from Paloma down to the L. A. Works, and that I

(Testimony of Alfred George Cody.)

would have the supervision along with Mr. Letson, handling the people in the Pipeline Department.

This might not be the exact words, but it is the gist of the conversation. Handling the people in the operational end of the Pipeline Department in the L. A. Basin area. I asked him if it looked like I was going to have to leave Long Beach, I had my home there, and he said no, that he didn't think so. [330]

* * * * *

Q. Now, what was said in that conversation?

A. He said I probably knew as much about the law as he did, and asked me—told me that I should get a withdrawal card—he didn't say "withdrawal card," but he said I should sever my relations with the union.

I told him that I would go and ask for a withdrawal card.

Q. Mr. Cody, as a matter of fact, you mentioned the withdrawal card first, did you?

A. As such, yes.

Q. Yes. Now, I don't know whether I interrupted you or not. Were you going to tell me more about that conversation? And I am limiting it now to those matters relating to your getting out of the union or taking a withdrawal card.

A. Yes, he went into a lengthy discussion, stating to me that union activities didn't have anything to do with what he thought about a man's ability for taking care of a job; no matter what disagreements we had had in negotiations and [334] in grievance work, that he wanted me to know that with me or

(Testimony of Alfred George Cody.)

anyone else it didn't affect his judgment in picking people as supervisors.

Q. Now, you took a leave of absence, as you have testified, of some year and a half, in 1941 and 1942, for union business. At that time you were a pumper No. 1, I believe, is that right?

A. That is right.

Q. Then subsequent to that time you were promoted to a tester No. 1, were you not?

A. That is right.

Q. Now, after you were promoted to Tester No. 1, you were on leave of absence for union business again, were you not?

A. I believe so. [335]

* * * * *

Q. (By Mr. Brooks): Mr. Cody, you took a leave of absence in 1941 for union business, according to your testimony?

A. I did.

Q. After you returned from that leave of absence in 1941 you were promoted, were you not, from the job of Helper No. 1 to Tester No. 1?

A. Yes.

Q. You were granted a leave of absence for union business at some time after you had been promoted to the Tester No. 1 job, were you not?

A. Yes.

Q. You were, while a tester No. 1, still active in the union, were you not?

A. Yes.

Q. You were later promoted from the job of Tester No. 1 to field gauger, were you not?

A. Yes.

(Testimony of Alfred George Cody.)

Q. You continued your activity in the union after you were promoted to field gauger?

A. Yes.

Q. Were you not? A. Yes.

Q. And your activity in the union continued up until the time [340] you were promoted to assistant foreman. Isn't that right? A. Yes.

* * * * *

Mr. Brooks: I will withdraw the question. When did you start on your vacation in 1948?

The Witness: I believe that was August the 23rd.

Q. (By Mr. Brooks): And when was your vacation to expire?

A. I returned to work on September 13th.

Q. September 13th, 1948? A. Yes. [341]

* * * * *

Q. Tell me about this telephone conversation you had with Mr. Jones on September 8th or 9th—I mean the day you have identified.

A. You mean as to my testimony?

Q. Well, I want you to tell me what your recollection is as to what was said in that telephone conversation.

A. Well, I called Mr. Jones and told him that I was back and ready to go to work Monday. He told me that they were having some trouble and I asked him what the trouble was and he said it was a strike.

Q. Is that the first time you knew there was a strike in progress? A. Yes.

Q. You knew there was a strike in progress in Los Angeles on that day?

(Testimony of Alfred George Cody.)

A. Yes, in Los Angeles.

Q. You did not know until then it was against the Texas Company? A. No.

Q. What else did you say?

A. I jokingly said to him, "It looks like I got some more vacation coming" or something like that, to that effect, and he said, "No," they had a pass coming to do patrol work, and to be exact I believe it was patrolling and plant safety work.

Q. You were scheduled to go back to work on what day in September?

A. September the 13th.

Q. And you called Mr. Jones on either the 8th or 9th?

A. The 8th or 9th, or 9th or 10th. I am not too sure as to the date. It was either Thursday or Friday or Saturday, I don't know. It was one of those days.

Q. Why did you call Mr. Jones?

A. To let him know I was back.

Q. You were not due back to work until the 13th, were you?

A. I have always called on my return and told them that I [344] was back. It wasn't anything unusual.

Q. Now, your recollection is that Mr. Jones said that he had a pass for you and they wanted you to do patrol work?

A. Patrol and plant safety work. I don't know that that is the exact words.

Q. Well, are you positive of any one of those words, "patrol" or "safety" or "maintenance"?

(Testimony of Alfred George Cody.)

Are you positive of any one of those three words being used in the telephone conversation?

A. The word "safety" was used.

Q. The word "safety" was used? A. Yes.

Q. That is the only one you are positive of?

A. It is according to how you are going to say it.

Q. I mean those three words. I am asking you for your present recollection.

A. Yes, all three words were used.

Q. All right, and they were all three used by Mr. Jones? A. Yes. [345]

* * * * *

Q. What kind of work did you do beginning on September 13th when you first reported during the strike?

A. Patrolling the lines between the various stations, checking the gates, the locks on the gates of the fences around the various pump stations, and reporting, I believe it was every two hours, to the dispatcher.

Q. You started doing that work on the first night you worked during the strike?

A. Yes, but what I am not too clear about is maybe you are [348] thinking that midnight is Tuesday. I don't know how you are figuring that. Midnight wasn't Monday morning, it was a quarter to 1:00 Tuesday.

Q. But you started in doing the work that you have described in your direct examination and which you have just described. Is that right, and who had told you the kind of work you were to be doing that

(Testimony of Alfred George Cody.)

night? I am trying to find out how you knew what to do, Mr. Cody, beginning that evening.

A. I would say that Mr. Jones gave me part of the instructions and that I obtained the rest of them there that night.

Q. From this man whose name you don't remember?
A. Yes.

Trial Examiner Scharnikow: Was this man whose name you don't remember now the man you relieved?

The Witness: What was your question?

Trial Examiner Scharnikow: Was this man whose name you don't remember the man whom you relieved?

The Witness: I remember him but I don't remember his name.

Q. (By Mr. Brooks): He is the man whom you relieved?
A. Yes.

Trial Examiner Scharnikow: And he is the man from whom you received in part your instructions as to what you were to do?

The Witness: Well, he just went over the book that I [349] was to keep a record of things that I saw.

Q. (By Mr. Brooks): Who checks for leaks during normal operations of the Pipe Line Division?

A. The Line Rider and Gagers.

Q. Who checks the file boxes during normal operations in the Pipe Line Division?

A. I would say both the Line Rider and Gagers.

Q. You have stated that you checked the gates. Are you referring to the gates or were you referring

(Testimony of Alfred George Cody.)

to what they call the valves? A. The gates.

Q. Was that to determine whether the gates were still locked? A. Yes.

Trial Examiner: And that was normally done by Line Riders and Gagers?

The Witness: No—the fence walking, you mean?

Trial Examiner Scharnikow: Yes.

The Witness: That was normally done by pumpers on pump stations and the head pumpers at stations—well, the headquarters, I believe.

Q. (By Mr. Brooks): Can you tell whether there is oil going through the pipe lines?

A. At various places, yes.

Q. At various places, and how do you determine that? [350] A. By a girgling sound.

Q. Are those near the tanks or near the pump stations? A. Near the pump stations.

Q. And you testified that to your knowledge as far as you know there were only two occasions when oil was going through the pipe lines while you were on duty? A. Yes. [351]

Q. Now, you testified that you reported that, is that right? A. Yes.

Q. Well, tell me about your reporting the first incident, what you said, and to whom you said it, and what kind of a report you made.

A. I made my report to a dispatcher—I don't know who was on duty—and told him there was oil coming in at the Los Alamitos Farm, and he said that he didn't have any record of any oil coming in.

Q. Was that a written report or an oral report?

A. Oral report over the telephone.

(Testimony of Alfred George Cody.)

Q. You considered that as a part of your duties at that time, I take it? A. Yes, sir.

Q. Would there be leaks in the pipeline if no oil was being pumped through? A. Yes.

Q. They would be less likely, I presume, would they not? A. Yes.

Q. Because there is no pressure. You continued from the 13th, the night of the 13th,—which would be 12:01 of the morning of the 14th—to work each evening doing the same kind of work, until when?

A. They gave me two days off that week, but I don't [352] remember what the days was. I think I can find the schedule that was handed to me.

Q. You don't remember how many days you worked, then, before you—how many continuous days you worked, beginning on the early morning of the 14th? A. I am not sure, no.

Q. Do you remember the day your accident occurred? A. Yes.

Q. Had you worked continuously on a 40-hour a week basis from the time you commenced during the strike until the time of your accident?

A. Yes.

Q. Having two days off, I guess, each week?—Well, strike that.

When did the accident occur?

A. Thursday, September the 23rd.

Q. That is the day of the accident?

A. Yes.

Q. Then, except for two days off, you worked

(Testimony of Alfred George Cody.)

each day between the morning of the 14th and the 23rd? A. I believe that is right.

Q. Did you have any conversations during that time with Mr. Jones, regarding the type of work that you were doing and regarding your duties?

A. Yes. [353]

Q. Do you remember when that took place?

A. I believe I would be correct that every morning while I was on the daylight shift.

Q. Every morning you talked to Mr. Jones?

A. While I was on the daylight shift.

Q. On any of those mornings, did he give you any instructions regarding the work that you were to do? A. I don't remember any.

Trial Examiner Scharnikow: What is the daylight shift?

The Witness: 8:00 to 4:00.

Q. (By Mr. Brooks): During the time between the morning of the 14th and the date of your accident, did you have any conversations with Mr. Dreyer regarding the duties that you were to perform or were performing? A. Yes.

Q. Do you remember when that took place?

A. In the early part of the week of—I don't remember the day—ending September the 25th.

Q. And where did that conversation take place?

A. In Mr. Jones' office.

Q. Who was present?

A. I believe Mr. Jones and Mr. Dreyer.

Q. Will you tell me what was said in the conversation, please?

(Testimony of Alfred George Cody.)

A. Yes. As I was going through the refinery picket line and some of the pickets hollered and told me to tell Mr. Dreyer [354] that he had better cut out trying to haul guys through that picket line.

He asked me who they were; and I told him there were about 60 to 65 people on the picket lines that morning, and that I didn't know who said what. One guy hollered from the front, and I turned, and another guy hollered from the back; and he told me something about that that was one of the things that was wrong with me as a supervisor. That I should remember who said those things.

Q. Anything else?

A. Not that I remember.

Q. Did you show your pass that morning when you came through? A. Yes, sir.

Q. Then this was not said to you at the time you stopped to show your pass, but——

A. As I was leaving to drive away.

Q. ——as you were leaving. Was anything else said at that time, I mean about your duties?

A. I don't recollect any other thing being said.

Q. Now, yesterday you testified, Mr. Cody, that during the week that you were scheduled to work from 8:00 to 4:00, which is the daylight shift, there were some run tickets, only, to be delivered to some parts; is that correct? A. Delivered where?

Q. Some parts. You didn't say yesterday where they were to [355] be delivered.

A. I didn't know.

(Testimony of Alfred George Cody.)

Q. But there were some run tickets which were to be delivered? A. Yes.

Q. What are run tickets?

A. It is a document that shows, by a witness, how much oil was shipped from a tank, by high and low gauge, and temperature and cut.

Q. Who makes out the run tickets?

A. Normally, gaugers.

Q. And who made out these run tickets?

A. I don't know.

Q. Run tickets are normally to be delivered to the office, are they? A. Yes.

Q. And these, according to your testimony yesterday, were to be delivered, and you testified, "I was not asked directly to take them."

Did anybody ask you indirectly to take the run tickets some place? A. Yes.

Q. Who?

A. Mr. J. J. Evans, chief dispatcher.

Q. And was that on the day—during the week you were working daylight shift? [356]

A. Yes, sir.

Q. Do you remember what day it was?

A. No.

Q. What did Mr. Evans say?

A. He said that these run tickets had to be delivered.

Q. What did you say?

A. I didn't say anything.

Q. Where were the run tickets?

(Testimony of Alfred George Cody.)

A. In his hand.

Q. What did he do with them?

A. Placed them on my desk.

Q. And what did you do with the tickets?

A. Nothing.

Q. You left them lying on the desk?

A. Yes, sir.

Q. When you left at the end of your shift, were they still lying on your desk?

A. Yes, sir. Not at the end of my shift; left at the end of my conversation with Mr. Jones.

Q. At the end of your conversation with Mr. Evans, you mean? A. Jones.

Q. Jones. Did you have a conversation with Mr. Jones about those run tickets? A. No.

Q. Well, I am confused. Mr. Evans had some run tickets [357] in his hand, and laid them down on your desk; is that right?

A. After he said they had to be delivered.

Q. And you said nothing, but left them lying on your desk? A. Yes.

Q. Then did you leave your desk?

A. Soon after that I went out on a patrolling job.

Q. And left them lying on the desk?

A. Yes, sir.

Q. Did you later, during that shift, come back to your desk? A. No, sir.

Q. Did you come back to your desk the next day?

A. Yes.

Q. Were the run tickets still there?

A. No, sir.

(Testimony of Alfred George Cody.)

Q. You also testified that on Tuesday of that week, which is the week you worked daylight shift, there were some strappings, that is, measurements on tanks, that were to be delivered; is that right?

A. That is right.

Q. Are strappings written reports of measurements of the tanks? Is a strapping a written report? Just describe what a strapping is.

Trial Examiner Scharnikow: Will you tell me, how do you spell that, incidentally? [358]

Mr. Brooks: That is s-t-r-a-p-p-i-n-g-s.

The Witness: Yes. It is a sheet of paper that has on it markings in feet and inches of the tank, pipe number, and is used to determine how much oil, quickly, by guaging a tank and reading the gauge, and looking on the strapping as to how much that guage represents in oil in that tank.

Trial Examiner Scharnikow: In terms of gallons or barrels?

The Witness: Usually barrels; sometimes in gallons.

Q. (By Mr. Brooks): That strapping report is made out by whom?

A. I believe the engineers' department.

Q. Do you know who made this particular strapping report out that we are speaking of?

A. No.

Q. Who normally delivers the strapping report?

A. I don't know.

Q. Your testimony was that there was such strappings to be delivered. Where did you first see these

(Testimony of Alfred George Cody.)

strappings? A. In Mr. Evans' hands.

Q. Was this the same day that the run ticket incident occurred? A. No.

Q. Where was Mr. Evans when you saw them in his hands?

A. In the hallway outside of his office. [359]

Q. Did Mr. Evans say anything to you about them?

A. Yes, he did. He said that these strappings had to be delivered. That is how I knew they were strappings, because they were in an envelope.

Q. Did you say anything?

A. I told him he could depend that I wasn't going to take them for him.

Mr. Hackler: Will you read the answer back, please?

(The answer was read.)

Q. (By Mr. Brooks): How long did you continue your work, to the best of your recollection, after that incident, not that day but until the 28th?

A. I worked Monday, Tuesday, Wednesday, Thursday and Friday—Thursday, 8:00 to 4:00; I worked Friday from 4:00 to 12:00, and I didn't work any more.

Q. Were there any other incidents——

Trial Examiner Scharnikow: Is that an answer to your question?

Mr. Brooks: I think so. Read it.

Trial Examiner Scharnikow: I thought the question was how long that day.

(Testimony of Alfred George Cody.)

Mr. Brooks: Not that day.

Trial Examiner Scharnikow: Oh, I misunderstood you; I misheard.

Q. (By Mr. Brooks): Were there any other incidents prior to [360] September 28th when you chose not to perform some task that was either requested of you or suggested to you?

A. Not that I remember.

Q. The next occasion, and the only other occasion, according to your present recollection, other than these two regarding the run tickets and the strappings, was on September 28th? A. Yes.

Q. Now, directing your attention to September 28th, what time did you report to Mr. Jones' office that day?

A. I believe it was about 11:30 in the morning.

Q. That was on Tuesday, September 28th?

A. Yes, sir.

Q. You had received a telephone call on the previous day, Monday, the 27th?

A. As I recollect it, yes.

Q. And that was from Mr. Jones? A. Yes.

Q. Were you at home when he first called, as far as you know? A. So far as I know.

Q. Do you recall what time of the day that was?

A. No.

Q. Will you tell me, as best you can, what was said in the telephone conversation of the 27th between you and Mr. Jones? [361]

A. On the telephone, he just asked me to come

(Testimony of Alfred George Cody.)

into his office Tuesday at noon, "the next day at noon," I believe his words were.

Q. And you said, "O.K." or something to that effect?

A. I assured him that I would be there.

Q. Do you remember any other conversation that occurred at that time? A. No.

Q. When you went to the office on the 28th, you went directly to Mr. Jones' office?

A. Yes, sir.

Q. Was there anyone in the office with Mr. Jones when you entered? A. Yes.

Q. Who? A. Ray Rogers.

Q. Who is Ray Rogers?

A. He is foreman of the maintenance crews, pipe line division.

Q. Did any conversation occur between you and Mr. Jones while Mr. Rogers was present?

A. No.

Trial Examiner Scharnikow: The answer is "No"?

The Witness: "No."

Q. (By Mr. Brooks): Then tell me, as best you can remember, [362] what Mr. Jones said to you and what you said to Mr. Jones on that occasion.

A. His reason for calling me in was that they were going to change our schedules, that the company was going to start operations, and that managerial people would go on 12-hour days, six days a week, and that we would be paid time and a half for the 32 hours.

(Testimony of Alfred George Cody.)

Q. That would mean that the first 40 hours would be at straight time, and then the last 32 hours of the week at time and a half, is that correct?

A. I think so.

Q. Now, when Mr. Jones told you that they had decided that the managerial employees were going on this six-day, 12-hour a day shift, what did you say?

A. I believe I asked him if they had notified the union.

Q. Your present recollection is that you asked him if they, meaning Mr. Jones or someone with the company, had notified the union? A. Yes.

Q. What did Mr. Jones say to that?

A. "No."

Q. And then what did you say?

A. I don't believe I said anything. I think he said the rest of it.

Q. And what was the next thing that Mr. Jones said? [363]

A. That we were going to—this might not be in sequence the way he said it.

Q. Well, tell it as best you can.

A. That we weren't going to ride patrolling singly any longer, that we were going to ride in pairs, and that the person who was going to ride with me was a man by the name of Hugo. I couldn't remember it yesterday.

Q. It is Huso, isn't it, H-u-s-o?

A. Yes, Huso. I asked him what he wanted me to do, then that is when he told me that—Mr. Jones'

(Testimony of Alfred George Cody.)

conversation was just a little bit different than Mr. Dreyer's.

Q. Now, at this time we are with the Jones conversation.

A. Mr. Jones said that he wanted me to go over to Yorba Linda and engage in sampling the tanks for a first-of-the-month report.

Q. He also said he wanted you to take the temperature, did he not?

A. Well, sampling means all of that.

Q. That is right. All right, Mr. Jones said, "I want you to go over to the Yorba Linda station and sample and gauge the tanks for the first-of-the-month report"? A. Yes.

Q. Did he say anything else in connection with taking the sampling and gauging of those tanks?

A. Yes, I believe he did say that I was to take samples [364] down to the Signal Hill lab and run them.

Q. He told you that these reports needed to be in by October 1st, did he not?

A. He said the first of the month reports. [365]

Q. He told you, did he not, that you could do that at any time between the time he was talking with you and the first of the month? A. Yes.

Q. What did you say when Mr. Jones wanted you to take this sampling and gaging of the tanks and you could do it any time between then and the first of the month?

A. Well, generally I related my history to him in relation to the Oil Workers International Union

(Testimony of Alfred George Cody.)

and my membership, participating in the harbor councils that I was assigned to.

Q. Had anyone connected with the union said anything to you prior to that time and after you had started to work on the 14th about the kind of work that would be permissible in the eyes of the union for you to do? A. No.

Q. You told Mr. Jones that you felt that you should not do the gaging and sampling work because it was work that was normally performed by non-supervisory people. Is that correct?

A. Yes.

Q. And then you related to him your long history with the union which constituted the basis for your not wanting to do that. Is that right?

A. Yes.

Q. Was it about that time that Mr. Dreyer walked by? A. Yes. [366]

Q. And I believe that you testified that Mr. Jones called to Mr. Dreyer to come in to the office. Is that right? A. That's right. [367]

* * * * *

Q. Will you tell us what was said in the conversation between you, Mr. Jones and Mr. Dreyer after he came into the office on this occasion on September 28th?

A. As I remember it, Mr. Jones said to Mr. Dreyer that he had talked over the assignment with me and that I didn't feel like I could do it. Mr. Dreyer then went through a long talk and I talked to Mr. Dreyer again about my position in the thing. It

(Testimony of Alfred George Cody.)

finally came out that it was he who gave the order, and he said that what he wanted me to do was to go over to Yorba Linda and gauge and sample the tanks and get the station ready to run. I refused to do it and [370] he terminated me.

Q. Now, are you positive that Mr. Dreyer said that he wanted you to get the station ready to run?

A. That is what he said.

Q. What did you say when he said he wanted you to get the station ready to run?

A. I didn't even discuss it with him.

Q. Did you make any reply?

A. Only that I wouldn't do it.

Q. You said, "I won't do it"?

A. Well, I just refused to do it. I don't know how I said it.

Q. Had Mr. Jones told you that he wanted you to get the station to run? A. No, sir.

Q. Did you mention to Mr. Dreyer that you suggested that the other man go along and do the work and you do the driving?

A. Did I say that?

Q. Yes. A. Yes, sir.

Q. Did you say that to Mr. Dreyer?

A. Both of them were sitting there.

Q. Well, did you say it on two occasions, once while Mr. Dreyer was not there and then again after Mr. Dreyer was there? [371]

A. I don't remember whether I did or not.

Q. But you know you said that one time?

A. Yes, sir.

(Testimony of Alfred George Cody.)

Q. What was Mr. Dreyer's or Mr. Jones' reply to your suggestion that the other man do the work and you drive him around?

A. Said that that wasn't fair to the other people on management's payroll, to expect them to do things and me not to. They also stated that they never asked me to perform any work before this particular time, forced me, I should say. They had never forced the issue about me performing any work until this particular time.

Q. Who said that?

A. I believe Mr. Dreyer.

Trial Examiner Scharnikow: May I interrupt for a question or two?

You say you suggested that you drive another man over there to get the station ready. Is that right, Mr. Cody?

The Witness: They had assigned a man to go with me by the name of Huso, I believe, and I told them that I would drive him over there and let him do the work, and that is when they told me it wasn't fair to ask other people in management to do the work and not ask me to do it.

Trial Examiner Scharnikow: What was Huso's job?

The Witness: I am not certain, but I think he was [372] called a junior engineer.

Trial Examiner Scharnikow: Can we have an agreement as to whether or not a junior engineer is a supervisory employee?

Mr. Purver: If the company says so.

(Testimony of Alfred George Cody.)

Mr. Brooks: We will stipulate he is a supervisory employee.

Mr. Purver: I so stipulate.

Trial Examiner Scharnikow: Off the record a second.

(Discussion off the record.)

Mr. Brooks: Mr. Examiner, I would like to clarify the stipulation regarding the junior engineer, Mr. Huso. He is not a supervisory employee in the true sense of the word, because he does not have employees working under his supervision. He is, however, excluded from the bargaining unit as a managerial employee and as a technical employee. He is, in our position, a representative of management as distinguished from the rank and file.

Trial Examiner Scharnikow: You agree with the stipulation?

Mr. Purver: That is satisfactory, yes.

Trial Examiner Scharnikow: Thank you.

Q. (By Mr. Brooks): Mr. Cody, did Mr. Dreyer also state that you could have until the 28th of September, until the first of the month to do this job that he had ordered you to do? [373]

A. No, Mr. Dreyer didn't.

Q. Did Mr. Jones state that? A. Yes.

Q. And you are positive that Mr. Dreyer did not?

A. He didn't say anything about it.

Q. I believe you testified that this Yorba Linda station is operated by steam.

A. That is correct. [374]

(Testimony of Alfred George Cody.)

Q. Have you ever in your 21 years' experience with the company started up a steam pumping station? A. Yes.

Q. And how many assistants did you have with you? A. None.

Q. And did anyone then take over the operation of the station after it was started?

A. I don't understand your question.

Q. Could you start a steam pump station to operating and then leave it unattended?

A. After you got it on the line?

Q. Yes. A. Certainly.

Q. What would be entailed in starting that Yorba Linda station to operate?

A. Firing the boilers.

Q. How are the boilers fired? A. By gas.

Q. What would you have to do to fire the boilers?

A. You mean from beginning to end, now?

Q. Yes.

A. Blow out or air out the fire box, check all lines to see that there wasn't any leaks any place. Probably in that case where they have lines blinded off, you would have to change the blind, on the boilers you were going to light up, see that [375] the correct amount of water was in the boiler and then light the boiler and bring it up very slowly.

Q. How long would that take?

A. It should take at least two hours.

Q. What would be the next thing you would do to get it on the line?

A. To get the boiler on the line?

(Testimony of Alfred George Cody.)

Q. To get the station to operating and get the oil going through the lines.

A. There are a lot of things at that Yorba Linda pump station in the operations that a pumper has more to do than just getting the pump started. If you just want a pump started, you would get steam up on the boiler, open the boiler on the steam line, and open the steam line onto the oil pump.

First, open the oil lines onto the pump and then open the steam line and then start pumping.

Q. And then after that was done, it is your testimony that it would be good practice to leave the station unattended without the presence of a pumper?

Mr. Purver: I object. He hasn't testified that it was good practice to do so.

Mr. Brooks: Well, I will rephrase the question.

Q. (By Mr. Brooks): Would you testify that it is good practice to start the pump after it had been idle—start [376] the station after it had been idle, and then leave it unattended?

A. I am going to have to clear up with you what you mean by "unattended." If you mean going across the street and gauging and sampling of the tanks, it is done every day. It has been done every day since they started up over there.

Q. How long then could you leave it unattended without watching it immediately after it started operating after several weeks' idleness?

A. Any good pumper would check it every few minutes.

(Testimony of Alfred George Cody.)

Q. Did you say Mr. Dreyer said for you to start the station operating?

A. No, I didn't say that.

Q. Let me get it exactly right. What did he say to you?

A. I said Mr. Dreyer's order to me was to go out and gauge and sample the tanks at Yorba Linda and get that station ready to run period. That was all that was said about it.

Q. Now, and your answer was, in effect, "No, I will not do it"? A. In effect, yes.

Q. Did you tell Mr. Dreyer at that time that you were willing to continue to ride the lines to check for leaks?

A. Yes, I told Mr. Dreyer at that time that I was willing to ride the lines even 18 hours a day if they needed that kind of work. [377]

Q. And did you tell him that you were willing to continue to check the gates? A. What gates?

Q. The gates that you have testified you did check.

A. The gates on the fences?

Q. Well, you have testified you checked the gates, Mr. Cody. Isn't that right?

A. I testified that I saw that the locks on the gates of the fences were locked.

Q. Did you tell Mr. Dreyer that you were willing to continue to check the gates to see that the locks were locked?

A. No. That wasn't discussed.

Q. Did you tell Mr. Dreyer that you were willing to continue to check the valve boxes?

(Testimony of Alfred George Cody.)

A. That wasn't discussed.

Q. Did you tell Mr. Dreyer when he told you what he wanted you to do that he would have to give an order to that effect? A. Yes, sir.

Q. And then what did Mr. Dreyer say?

A. That is when he gave his order.

Q. And then you said, "I refuse to do it," or words to that effect? A. That is right.

Q. As I understood your testimony Friday and Thursday, the basis for your refusal to do that work was that it is [378] normally performed by rank and file employees. Is that right? A. Yes.

Q. And as I understood your testimony, you declined to deliver the strappings because that it is normally performed by nonsupervisory employees. Is that right?

A. I didn't refuse to take them.

Q. No; you declined. You just didn't do it; is that right? A. That is right.

Q. It was on your desk, or, I believe, the strapings were offered to you by Mr. Evans. Is that right? Not directly, no.

Q. And you told him, at least, that he could depend on you not delivering them, didn't you?

A. That is right.

Q. And the reason for that was because that is normally done by nonsupervisory employees?

A. Not necessarily.

Q. Do you know who normally does that work?

A. It could be a lot of people.

Q. Well, what was the basis for your not doing

(Testimony of Alfred George Cody.)

the work at that time, namely, delivering the strappings?

A. Generally because the strappings that are sent out to various companies, at least, are to show on the run tickets as to how much oil was shipped from a tank. I wanted no part in the operation. [379]

Q. Is the delivery of the run tickets which were laid on your desk normally made by nonsupervisory employees?

A. Some of them, yes.

Q. Is that the basis for your not delivering the run tickets?

A. Because it was part of an operation, yes.

Q. You were not ordered to take the strappings and deliver them, were you?

A. No, sir.

Q. You were not ordered to deliver these run tickets, were you?

A. No, sir.

Q. Do you remember a discussion with Mr. Dreyer during this conversation of the 28th with respect to the presence or absence of pickets at the Yorba Linda station?

A. Yes, I believe I do.

Q. What was that conversation?

A. I think that he said——

Trial Examiner Scharnikow: When?

Mr. Brooks: This was in the September 28th conversation. Is that right?

The Witness: I am not too sure as to the time.

Q. (By Mr. Brooks): Let me rephrase the question, Mr. Cody. Was there a conversation on the 28th at the time Mr. Jones, Mr. Dreyer and you were conversing, wherein the presence or absence of pickets

(Testimony of Alfred George Cody.)

at the Yorba Linda station was mentioned? [380]

A. Yes.

Q. Relate that conversation to us, please.

A. As I remember, he said that he had noticed that there weren't always pickets at the Yorba Linda pump station, and that I could pick my time to go into the station so as not to get those people irritable.

Q. Did you make a reply to that?

A. I don't believe I did.

Q. Was anything else said about pickets or picking your time, that you now recall? A. No.

Q. Mr. Cody, still referring to the conversation of the 28th you testified that you described to Mr. Jones the history of your activities on behalf of the union while an employee of the company, and that such was the reason for your refusing to do this work, I believe. Is that right? A. Yes.

Q. Did you repeat that conversation to Mr. Dreyer? A. Yes.

Q. Did you tell him that this history of your activities was the reason that you did not wish to do the work or the reason that you refused to do the work?

A. Yes. I told him that I had an actual fear of what would happen to my family and my home because of my activities in the union, especially relating to what you are asking me now [381] about the committee that I was a member of in the Los Angeles Basin area.

Q. Now, up until September 28th, according to

(Testimony of Alfred George Cody.)

your testimony, you had driven through the picket line.

A. With a pass.

Q. On September 28th did you have a pass?

A. Yes, sir.

Q. Had anybody in the union said anything to you about revoking or recalling the pass?

A. No, sir.

Q. I want to direct your attention now to the first conversation you had with Mr. O'Connor in November wherein you talked to him about getting your job back. You testified that this conversation was on November 4. Is that right?

A. As I remember it, yes.

Q. At least it was on or about November 4?

A. That is right.

Q. General Counsel's Exhibit No. 13, which is the strike settlement, is dated November 4, 1948. Do you know whether you conversed with Mr. O'Connor on that day or a day or so after, or does that help you place it?

A. My memory is that it was the same day.

Q. Same day. Mr. O'Conner told you at that time, did he not, that in view of the circumstances of your discharge that it would be necessary for you to make your peace, as it were, [382] with Mr. Dreyer before you could be rehired or reinstated?

A. Yes.

Q. Next, I wish to direct your attention to the November 8th conversation which was the first one you had with Mr. Dreyer after your dismissal. At that time was there still a picket line at the Pipeline Division operations?

A. No.

(Testimony of Alfred George Cody.)

Q. In that conversation you requested reinstatement to your job as a supervisor, did you not?

A. Yes.

Q. On November the 15th when you next saw Mr. O'Connor did not Mr. O'Connor repeat that if you were reemployed, Mr. Dreyer would have to do it?

A. Yes.

Q. Did Mr. O'Connor state at that time that such was true because Mr. Dreyer had discharged you for refusing to obey an order?

A. No, I don't believe he said that.

Q. Did he say anything substantially the same as that, and, if so, tell us what he did say?

A. All I can remember is that he told me that I had to make my peace with Mr. Dreyer.

Q. You next talked to Mr. Dreyer on November 16, as I remember it. Did you at that time ask Mr. Dreyer for reinstatement to your position as a supervisor? [383]

A. No.

Q. Referring back to the first conversation with Mr. O'Connor, did you not tell Mr. O'Connor that you were very anxious and eager to return to work for The Texas Company in order to protect your long service with the company?

A. With Mr. O'Connor?

Q. Yes. A. Yes.

Q. The first conversation? A. Yes.

Q. In the first conversation with Mr. Dreyer on November 8 you told him the same thing, did you not?

A. I don't remember whether I did or not.

(Testimony of Alfred George Cody.)

Q. Would you deny that you told him that you wished to return to the company's service in order to protect the 21 years you had with the company?

A. On November the 8th?

Q. Yes.

A. I might have said that.

Q. On November 16th in the conversation with Mr. Dreyer, did you say that you wished to return to the employ of The Texas Company because of your long service with the company and in order to protect that service?

A. I didn't qualify it at all. I just offered to return to work to any job. [384]

Q. Mr. Jones was present at that conversation, wasn't he? A. Yes.

Q. Tell me as best you can what you said to Mr. Dreyer with respect to your return to work in the conversation of November 16th.

A. On that particular day I didn't do much talking. He done most of the talking.

Q. You remember that conversation at the present moment, do you?

A. I remember of having it, yes.

Q. Can you tell me now how the conversation started? A. Yes, I believe I can.

Q. Will you do so?

A. I told him that I was there to get a job back in the pipe line division.

Q. What did Mr. Dreyer say?

A. He told me that he thought my act was a *premeditated* act, that if it had been something that I had

(Testimony of Alfred George Cody.)

done on the impulse of a moment he might be able to excuse it, but he thought I had planned it.

Q. What did you say?

A. I don't believe I said anything.

Q. As I understand your testimony, it is that you said these words in applying to Mr. Dreyer, "I would like to have a job back in the pipe line division." [385]

A. Yes, and I qualified the words.

Q. Tell me how you qualified them.

A. I qualified them by telling him I had worked on nearly every job they had had in the pipe line department and, to my knowledge, I had never been told that I wasn't doing a job, and that I thought the company should consider the amount of experience and the training that I had had in determining whether they was to put me back on the work or not.

Q. And you said nothing, I believe you have testified, about your past experience except that you had worked on nearly every job?

A. That is right, I didn't condition my request for a job because of seniority or any other thing. I just asked for a job.

Q. No, you didn't say you offered to return if they gave you all of your service credit and only if they gave you all your service credit, did you?

A. No.

Q. But the past service was discussed?

A. By me?

Q. Yes.

(Testimony of Alfred George Cody.)

A. Only relating to the experience and training that the company had given me.

Q. You did state, did you not, Mr. Cody, that you hated [386] to lose that 21 years service that you had with the company? A. Naturally.

Q. You did state that, did you not?

A. In this meeting?

Q. Yes.

A. I don't remember I did. I did in the first one.

Q. But you are not sure about the November 16th meeting?

A. No, I don't know whether I discussed that.

Q. Referring now to the meeting you had with Mr. O'Connor in early January of 1949, did you say anything to Mr. O'Connor about the letter that you had written to him under date of December 16, 1948, and which is now in evidence as General Counsel's Exhibit 25?

A. The next meeting I had with Mr. O'Connor after I wrote the letter, he discussed it with me.

Q. Well, was the meeting early in January, 1949, the first meeting that you had with him after you had written the letter?

A. I think that I testified that is how I remember it.

Q. Do you recall now whether or not the January meeting was the first one you had with Mr. O'Connor after the letter? A. Yes.

Q. And you did mention that letter at that conversation? A. I didn't; he did. [387]

Q. Mr. O'Connor did? A. Yes.

(Testimony of Alfred George Cody.)

Q. Isn't it a fact that at that time you told Mr. O'Connor that you were very anxious to get back with the company in order to protect the 21 years' service? A. No.

Q. Isn't it true, Mr. Cody, that you said you would appreciate Mr. O'Connor helping you get a job in some other department with the company in order—I will break that down. Didn't you say you would appreciate his getting you a job in some other department of the company?

A. I think he suggested it.

Q. It is your recollection that Mr. O'Connor suggested that? A. Yes, sir.

Q. Would you deny that you suggested that?

A. Yes, I would deny that I suggested it.

Q. Did you not state that you would like to have a job in some other department of the company if you couldn't get back in the pipe line division, in order to protect your 21 years' service with the company?

A. No, I never made a statement like that.

Q. You are a participant in the company's pension plan, are you not? You were as an employee of the company? A. Yes.

Q. Have you taken any action regarding that pension plan [388] since your dismissal on September 28th? A. Have I taken any?

Q. Yes. A. No.

Q. Have you been informed that it is cancelled or revoked?

A. No. As I understand it, I have an annuity that

(Testimony of Alfred George Cody.)

was sent to me by the Travelers Insurance Company because I had 20 years' service. I have a certain amount of pension coming to me at a certain age.

Trial Examiner Scharnikow: By that, do you mean that you are receiving payments now?

The Witness: No, not until I am 65 years old.

Q. (By Mr. Brooks): Isn't it true that you told Mr. O'Connor that you would like to get back in order to protect the service and to protect that pension?

A. Not at that time. I did earlier. I gave him quite a pitch on it.

Q. But it is your testimony, I take it, that you did not say that after November 16th? A. No.

Q. You were a participant, were you not, in the company's group life insurance plan?

A. Yes.

Q. After September 28th did you take any action to convert or take any other kind of action with respect to this insurance [389] policy?

A. The policy?

Q. Yes.

A. Maybe I don't understand the difference.

Q. Well, you are a participant in the company's plan whereby you are insured, I believe. Isn't that right? A. I was.

Q. My question is, did you take any action respecting the insurance policy or the insurance plan after September 28th when you were dismissed?

A. Not that I recall.

Trial Examiner Scharnikow: You are not paying any premium on any policy that came out of that

(Testimony of Alfred George Cody.)

group life insurance, are you? A. No.

Q. (By Mr. Brooks): You testified on direct examination that you told Mr. Dreyer—I believe I am correct now. You correct me if I am wrong. You told Mr. Dreyer on November 16th that you admitted you made a mistake as a foreman. Is that a correct statement? A. Yes.

Q. And that was on November 16th?

A. Yes.

Q. And you stated at that time to Mr. Dreyer that other foremen had made mistakes and had been put back in the line of [390] progression. Is that right? A. No.

Q. You did not testify to that? A. No.

Q. Did you ever make such a statement to Mr. Dreyer? A. No.

Q. Did you ever make such a statement to Mr. O'Connor? A. No.

Q. Did you ever state to Mr. Dreyer that an employee had made a mistake for which he had been discharged and that later he had been reinstated and put back in the line of progression?

A. Not exactly that way.

Q. Did you use the words "line of progression"?

A. Yes.

Q. What conversation was that?

A. I just mentioned to him of cases that had happened where people were given disciplinary action for something they had did.

Trial Examiner Scharnikow: This is to Mr. Dreyer or to Mr. O'Connor?

(Testimony of Alfred George Cody.)

The Witness: This is to Dreyer.

Trial Examiner Scharnikow: When?

Q. (By Mr. Brooks): On November 16th?

A. I can't swear as to that. I had a number of meetings [391] with him.

Q. On your direct examination, Mr. Cody, on October 28th, Friday, you testified that your statement to Mr. Dreyer that other people had been set back for various things they had done on the job and then were again put in line of progression by a committee or by his own actions, on November 16th.

A. That might have been when it was.

Q. Mr. Cody, do you remember having a conversation with Mr. Dreyer about reinstatement on February 1, 1949? A. Not on reinstatement.

Q. Did you have a conversation with him on that day? A. Either the 1st or 2nd.

Q. Was that conversation held in the afternoon, at the office of the pipe line division?

A. I believe so.

Q. Will you tell us what transpired in that conference?

A. I just told him I was over to see him about getting a job. He asked me if I had any evidence, any further evidence, and I didn't have any more to offer than what I had already told him.

Q. How long did this conversation last?

A. I don't know.

Q. Was it as long as an hour?

A. I don't remember. I don't remember how long it was. [392]

(Testimony of Alfred George Cody.)

Q. Was Mr. Jones present at that conversation?

A. Yes, sir.

Q. Isn't it true that in that conversation of early February, either February 1st or 2nd, according to your testimony, that you stated to Mr. Dreyer that you would continue to work and do everything you could to get back with the Texas Company in order to save your 21 years of service?

A. No, I didn't say it that way at all.

Q. How did you say it?

A. I told him that I would do everything within my power to get a job back in the pipe line department at the Texas Company.

Q. Now, you emphasized the word "a".

A. A job back.

Q. And the word "back." Is that right?

A. Yes.

Trial Examiner Scharnikow: Is that right?

The Witness: Yes, get a job back. I believe that is the words I used.

Q. (By Mr. Brooks): At that time, isn't it true that you asked Mr. Dreyer if there were any possibility of your getting a job up North?

A. I believe I did.

Q. And when you asked him if it were not possible to get a job with the company up North, didn't you say something [393] to the effect that you wished to do that even to the extent of moving in order to protect your past service?

A. No, I didn't say anything about past service.

Q. Referring back to the conversation with Mr.

(Testimony of Alfred George Cody.)

O'Connor, which you testified occurred in early January of 1949, you said something was said about a foreign job, I believe was your testimony. Is that right? A. Yes.

Q. Isn't it true that in connection with the discussion that you and Mr. O'Connor had concerning the procurement of a job with the company in some other department, that Mr. O'Connor said, "I will see if I can get you a job with the foreign operations department"?

A. No, that isn't how I understood it. [394]

Q. Well, is that what he said?

A. I say again that isn't the way I understood him.

Q. How did you understand him, what did you understand him to say?

A. It was about meeting with Mr. Dreyer. We were discussing a meeting with Mr. Dreyer and he said that if I couldn't get Mr. Dreyer to accept me back, to come back up and see him, that maybe through the New York office he could arrange a job in some foreign part of the company. That is as I remember.

Trial Examiner Scharnikow: Did Mr. O'Connor tell you that if Mr. Dreyer wouldn't take you back, he would see, that is, O'Connor would see, about a foreign job for you?

The Witness: Yes, sir.

Trial Examiner Scharnikow: Is that what he said?

The Witness: Yes, sir.

(Testimony of Alfred George Cody.)

Trial Examiner Scharnikow: That he would see about a foreign job only if Dreyer would not take you back?

The Witness: That was the tenor of the conversation.

Q. (By Mr. Brooks): What was your response, Mr. Cody, to Mr. O'Connor's offer in that respect?

A. I asked him if I couldn't continue trying to get a job back in the Pipeline Division, and that if I couldn't, couldn't I come back up and discuss this with him at a later date. He said his door was open to me any time.

Q. Did you ever file a written application for a job with [395] The Texas Company after September 28, 1948? A. No.

Q. How old are you, Mr. Cody? A. 42.

Mr. Brooks: I have no further questions.

Redirect Examination

Q. (By Mr. Purver): Mr. Cody, you testified that you had taken a series of leaves of absence since 1941 on union business. Is that correct?

A. That is right.

Q. Now, was there a union contract in existence in 1941? A. Yes, sir.

Q. And during the subsequent years?

A. Yes, sir.

Q. Did those contracts provide for leaves of absence on union business? A. Yes, they did.

Q. Did you take your leaves in accordance with those provisions of the series of contracts providing for leaves on union business? A. Yes.

(Testimony of Alfred George Cody.)

Q. You testified that the first meeting of the Workmen's Committee in February, 1948, Mr. Dreyer or Mr. Jones indicated that you could not participate in that meeting. Is that correct? [396]

A. Yes.

Q. Do you know of any occasions where company employees were told they could not participate in such Workmen's Committee meetings prior to that time?

A. Yes.

Q. Will you tell us when and who?

Trial Examiner Scharnikow: And how he knows.

Q. (By Mr. Purver): And how you know.

A. Because I was present at a meeting when Robert Fisher, who was a member of the Workmen's Committee, was serving as a relief dispatcher and attended one of the Workmen's Committee meetings in 1947 with Mr. Dreyer, and Mr. Dreyer said to him, "What are you doing in here?" He didn't have much of an answer and Mr. Dreyer said, "You are part of management," and he said, "As such you can't serve on a workmen's committee." He sat in as a visitor.

Q. Now, your vacation lasted from August 23 to September 13, as I understand?

A. Yes.

Q. What part of that vacation did you spend out of Los Angeles or out of Long Beach?

A. I left about four or five days before Labor Day and came back either Wednesday or Thursday or Friday. I am not sure when I came back home.

Trial Examiner Scharnikow: After Labor Day?

The Witness: After Labor Day.

(Testimony of Alfred George Cody.)

Q. (By Mr. Purver): When was the first occasion that you learned that a strike was actually taking place among the employees of The Texas Company Pipeline Division?

A. When I called Mr. Jones to report back.

Q. Had you received any information whatsoever that there might be a strike prior to that time?

Mr. Brooks: Mr. Examiner, I object to that as immaterial.

Trial Examiner Scharnikow: I think some point was made by you in your examination, Mr. Brooks, and in the course of it you asked the witness whether he had seen the newspapers.

Mr. Brooks: Regarding his knowledge of a strike being in progress.

Trial Examiner Scharnikow: That is right.

Mr. Brooks: And he has now testified that he didn't see a newspaper, that he did not know there was a strike in progress until he received the telephone call, or he made the telephone call.

Trial Examiner Scharnikow: I am going to permit it, Mr. Brooks. I will overrule the objection.

So you want the question read back, Mr. Cody? Do you understand it? Do you want it read back?

The Witness: Yes.

Trial Examiner Scharnikow: Read the question.

(The question was read.) [398]

The Witness: No.

Q. (By Mr. Purver): Well, between Big Bear and Los Angeles, on your return back from your

(Testimony of Alfred George Cody.)

vacation, did you make any stops? A. Yes.

Q. Where did you stop? A. Fontana.

Q. What for? A. Gasoline.

Q. Was there any discussion about a strike at the gasoline station?

A. Only that there was a strike on.

Q. Were you told among what employees of what companies? A. They didn't know.

Q. Merely that there was an oil strike on?

A. Yes.

Q. Did you ask any details?

A. I asked if there was a strike on against The Texas Company, that I was in one of their stations.

Q. What were you told? A. No.

Q. Do you know when the strike vote was taken among the employees of The Texas Company?

A. Yes.

Q. What date?

A. August 31st and September 1st, 1948. [399]

Trial Examiner Scharnikow: The witness doesn't know.

Mr. Purver: I asked him if he knew and he said yes.

Trial Examiner Scharnikow: It is apparent from his testimony that he wouldn't have known personally.

Mr. Purver: Not at that time.

Trial Examiner Scharnikow: And after that, only by hearsay.

Mr. Purver: That is correct, sir. I am going to ask him how he knows, and, if necessary, I can offer

(Testimony of Alfred George Cody.)

testimony or perhaps we can have a stipulation as to the date of the taking of the strike vote. Will counsel stipulate that the strike vote was taken on August 31st and September 1st? [400]

Mr. Brooks: I can't stipulate to that. I don't know. I didn't object, but I see no materiality. If it would take less time to let him answer the question, I wouldn't object.

Mr. Purver: Well, I intend to offer testimony to that point. I was really leading up to a stipulation. If there is any motion to strike that question, I will not object to it.

Trial Examiner Scharnikow: Shall it be struck or shall we leave it stand?

Mr. Brooks: I have no objection to its standing.

Q. (By Mr. Purver): Did you take part in the three years prior to 1948 in any strike vote elections?

A. Yes.

Q. Describe them.

Mr. Brooks: Mr. Examiner, I would like to inquire the purpose and materiality of the inquiries regarding the strike vote in 1948 and the strike vote in 1945. I fail to see the relevancy.

Trial Examiner Scharnikow: What do you have to say on that?

Mr. Purver: I would like to show that even though strike votes were held and strikes approved, that for at least three years prior to 1948 no strike took place in spite of those votes, so that in this case it would be impossible for this witness to have known beforehand that a strike was going to take

(Testimony of Alfred George Cody.)

place because even if there was a strike vote, it still [401] wouldn't have meant that there would be a strike, as his experience three years prior to that would show.

Trial Examiner Scharnikow: He testified first that he didn't know anything about the strike so far as The Texas Company was concerned until he got back.

Mr. Purver: That is right, and I want to establish his credibility.

Trial Examiner Scharnikow: And he has also testified that he had no information from which he might have known there was a strike at The Texas Company.

Mr. Purver: Well, what I really intended to do is to go a step further and show that he couldn't have known.

Trial Examiner Scharnikow: I will sustain the objection.

Mr. Purver: I would like to make an offer of proof that the witness, if permitted to testify, would testify that in at least three prior years after the strike votes had actually been taken, that up to and including the time of the deadline of the strike no strike took place, and that thereafter——

Mr. Brooks: We will stipulate that no strikes took place between 1945 and 1948.

Mr. Purver: And that strike deadlines were set? That strike deadlines were set?

Mr. Brooks: I don't know about that.

(Testimony of Alfred George Cody.)

Mr. Purver: Will you accept the stipulation insofar as it goes? [402]

Mr. Brooks: Yes.

Mr. Purver: I will point out that strike deadlines were set.

Trial Examiner Scharnikow: By affirmative strike votes?

Mr. Purver: By affirmative strike votes.

Trial Examiner Scharnikow: I have got a stipulation, of course, which I will accept to there having been no strikes.

On the further offer of proof that strike votes were taken and deadlines fixed, thereby——

Mr. Purver: And that no strikes were taken.

Trial Examiner Scharnikow: Do you object?

Mr. Brooks: I will not object.

Trial Examiner Scharnikow: I will accept the offer, then.

Q. (By Mr. Purver): Mr. Cody, did you participate in strike vote elections during 1946 and 1947? A. Yes.

Q. Do you know the results of those votes?

A. Yes.

Q. Did the membership vote to go out on strike on those two occasions? A. Yes.

Q. Did they go out on strike?

A. In '46 and '47?

Q. Yes. [403] A. No.

Q. Was a deadline set each time? A. Yes.

Mr. Brooks: Mr. Examiner, may I inquire at this time if the only purpose of the questions and

(Testimony of Alfred George Cody.)

answers regarding the taking of strike votes in 1946 and 1947 and the testimony that no strikes occurred during those years is to establish that this witness might not have known that a strike was started in September, 1948, despite the fact that he knew a strike vote had been taken?

Mr. Purver: Well, he did not know that a strike vote had been taken in 1948.

Mr. Brooks: May I inquire what the purpose of it is, then?

Trial Examiner Scharnikow: Well, that was a subject of discussion, at least implicitly, when the offer of proof was made.

Mr. Purver: Would you like me to clarify—

Trial Examiner Scharnikow: In other words, we have testimony which I accepted under your offer, there being no objection, that in spite of affirmative strike votes, no strike took place.

Mr. Purver: That is right.

Trial Examiner Scharnikow: My understanding of the purpose of that was, although you denied that the witness at [404] the time knew there had been a strike vote taken, that is, before he came back and made this telephone call prior to going to work, that even if he had known a strike vote had been taken he still wouldn't have any reason to believe that a strike had actually started.

Mr. Brooks: And I did not object on the assumption it was for that limited purpose.

Mr. Purver: That is the purpose.

Q. (By Mr. Purver): Now, you were asked by

(Testimony of Alfred George Cody.)

Mr. Brooks, Mr. Cody, why you telephoned Mr. Jones upon your return. Can you explain whether there was any reason for that?

A. Yes, because there was a request in the contract, and I assumed that it was the same in the managerial end, because I hadn't been up there too long, that a person going away from their regular classifications for any reason must give the company at least 12 hours notice before they returned.

Q. And you had done that in the past?

A. Yes.

Mr. Purver: I will ask the reporter to mark for identification as General Counsel's Exhibit No. 26, a document written in pencil, on the top of which the words "Schedule, 9-13 - 9-19," the name George Cody, over the initials of F. A. J."

(Thereupon the document above-referred to was marked General Counsel's Exhibit No. 26 for identification.) [405]

Q. (By Mr. Purver): I will hand you what has been marked for identification as General Counsel's Exhibit No. 26, Mr. Cody, and ask you what it is.

A. It is a schedule that was given to me for the 24 hour patrol work that the company was carrying on on my return from my vacation.

Q. Who gave it to you?

A. It was delivered to my house.

Q. By whom? A. Mr. Letson.

Q. Do you recognize the initialing on that?

A. Yes, sir.

(Testimony of Alfred George Cody.)

Q. Whose initials are they?

A. F. A. Jones.

Mr. Purver: I now offer General Counsel's Exhibit No. 26 in evidence.

Mr. Brooks: No objection.

Trial Examiner Scharnikow: General Counsel's Exhibit 26 is admitted in evidence.

(The document heretofore marked General Counsel's Exhibit No. 26 for identification was received in evidence.)

Q. (By Mr. Purver): Are these part of the instructions you received regarding your work assignment? A. Yes, sir.

Q. And on the 13th of September? [406]

A. No, I received them before the 13th.

Q. Your work assignment for the 13th of September? A. Yes.

Q. Were there any other instructions that you received prior to your going back to work on the 13th of September?

A. Accompanying this was the pass that I gave you.

Q. When you appeared at L. A. Headquarters, in accordance with this schedule, did you receive any instructions as to what to do?

A. Yes, I was given a little black book by the fellow that I relieved and it showed me what they were doing about calling in the dispatcher every two hours, I believe we were supposed to call in, and the checking, what they were doing. I followed the procedure they had been following.

(Testimony of Alfred George Cody.)

Q. And you rode the line for how long?

A. I was riding the line and checking stations all night.

Q. For how many days? A. Five there.

Q. During the course of riding the line and checking the stations were you in a position to see whether there were any gaugers, testers or pumpers at work?

A. Yes.

Q. Were there any gaugers, pumpers or testers at work? A. I never saw any.

Q. Do you remember the occasions when you reported to [407] Dreyer that coming through the picket line someone called out that the company should not try to bring people into the picket line?

Mr. Brooks: Mr. Examiner, that was testified to on direct examination and not covered on cross. I object as improper redirect.

Trial Examiner Scharnikow: Are you going further than your direct on this, or are you simply repeating?

Mr. Brooks: Unless there is some foundation laid——

Mr. Purver: My notes show this is on cross examination. I want to clear it up.

Trial Examiner Scharnikow: Let me hear the question.

(The question was read.)

Trial Examiner Scharnikow: I will overrule the objection. You may answer.

The Witness: Yes.

(Testimony of Alfred George Cody.)

Q. (By Mr. Purver): How did you pass through the picket line? A. In the company car.

Q. In a car? A. Yes.

Q. There has been a great deal of testimony about running pickets and strappings. Tell us clearly what a run ticket is.

A. I think the simplest way to say it, it is a bill of sale showing the gauges, temperatures, cuts and the witnesses as to [408] their correct ability.

Q. And what is a strapping?

A. A strapping might be better known as a table by which you convert the foot and inches of the gauges on the run ticket into barrels.

Q. Now, is the movement of oil described by run tickets and strappings? A. Yes.

Q. What is the relation of a strapping to a run ticket, if any? A. It shows that——

Q. What shows, the strapping?

A. The strapping shows the amount of oil that is in a tank by a gauge that is read on the tape of the oil in the tank. The reason that the table is used is to make it simpler for the people making out the run tickets. There is a strapping made for each tank.

Trial Examiner Scharnikow: There is a different table or strapping for each different size tank, is that it?

The Witness: No, for each and every tank, regardless of size.

Q. (By Mr. Purver): In other words, when a tank is repaired, is a new strapping or table set up for its capacity? A. Yes.

(Testimony of Alfred George Cody.)

Trial Examiner Scharnikow: This tank you are talking [409] about now might be a tank where the oil is initially collected as it comes from the well, is that it?

The Witness: It could be that or it could be storage tanks, any place The Texas Company has tanks, or if they have been on the lease long enough to have been filled with oil, they are usually strapped at that time and deductions for dead wood on the inside of the tank are calculated on this strapping so it reflects a true picture of how much oil is in the tank at a given temperature.

Mr. Purver: I now ask the reporter to mark for identification General Counsel's Exhibit No. 27, being a letter addressed to Mr. George Cody, over the signature of Mr. O'Connor, division manager, Refining Department, Pacific Coast Division.

(Thereupon the document above-referred to was marked General Counsel's Exhibit No. 27 for identification.)

Trial Examiner Scharnikow: Is there any date on that?

Mr. Purver: The 24th of September.

Mr. Brooks: We will stipulate that this letter bears Mr. O'Connor's signature and it was sent to Mr. Cody.

Mr. Purver: I so accept it.

Mr. Brooks: We offer to stipulate that this same letter went to one other supervisor, and that it went to those two supervisors by mistake.

(Testimony of Alfred George Cody.)

Mr. Purver: I am willing to stipulate it went to the [410] two supervisors, but no further than that. I am willing to accept that part of the stipulation.

Mr. Brooks: All right.

Q. (By Mr. Purver): Mr. Cody, I ask you whether you received General Counsel's Exhibit No. 27?

A. Yes.

Mr. Purver: I offer it in evidence.

Trial Examiner Scharnikow: Any objections?

Mr. Brooks: It is objected to as irrelevant and immaterial. It may have, Mr. Examiner, a limited purpose which if stated by counsel might make it material and relevant, but I see no relevancy.

Mr. Purver: I think it is highly relevant on its face, that that document should have been sent to Mr. Cody specifically, and then on the same day that the company sent out a letter which I will also later on put into evidence, saying that they are going to resume operations and that they fired him. I think it ties in very closely.

Trial Examiner Scharnikow: I don't see the purpose. This man was a supervisor.

Mr. Purver: Even though a supervisor he was sent the notice that was sent ordinarily to the non-supervisory employees. I think it is very significant.

Trial Examiner Scharnikow: How?

Mr. Purver: In that this supervisor wasn't even [411] receiving the same treatment of the supervisors. He was treated, as far as that letter was con-

(Testimony of Alfred George Cody.)

cerned, as a nonsupervisory employee. I think it is part of the possibility that everything was pointed towards a showdown with this witness.

Trial Examiner Scharnikow: You are objecting, Mr. Brooks?

Mr. Brooks: I would object that it is highly far-fetched, that there is no foundation for such purpose, that it is therefore irrelevant and immaterial, that it is incompetent proof for the purpose counsel has stated.

Trial Examiner Scharnikow: Well, it is a statement by the respondent to this witness concerning the strike.

Mr. Purver: The company policy.

Trial Examiner Scharnikow: The witness was not at the time an employee, but according to his testimony he later applied for employment as a rank and file employee.

I will take it. I will overrule the objection. General Counsel's Exhibit No. 27 is admitted in evidence.

(The document heretofore marked General Counsel's Exhibit No. 27 for identification was received in evidence.)

Q. (By Mr. Purver): If oil wasn't being run or produced, would there be any occasion for gauging or sampling to be done? A. I didn't get that.

Mr. Purver: Read that question, please.

(The question was read.)

The Witness: Yes. [412]

(Testimony of Alfred George Cody.)

Q. (By Mr. Purver): What are those occasions?

A. For 1st-of-the-month reports.

Q. And who ordinarily takes those reports, makes them?

A. The gaugers and pumpers and head pumpers make them, to the dispatcher.

Q. Are these employees covered by the contract?

A. Yes.

Q. That is, they are non-supervisory employees?

A. Yes. [413]

Q. And at the time you were asked to do that work and make that report were these men on strike?

A. Yes.

Q. When was Yorba Linda shut down prior to the strike? When was the last time, if it was?

Mr. Brooks: If you know.

Mr. Purver: If you know.

The Witness: I don't know if I understand your question right. Yorba Linda pump station was shut down over the week ends and started back up the following Monday. Does that answer that question?

Trial Examiner Scharnikow: Just a second.

Mr. Purver: I think I can clear that very easily.

Q. (By Mr. Purver): How often, if you know, was Yorba Linda shut down?

Mr. Brooks: Mr. Examiner, that question is very vague. I object to it for that reason.

Mr. Purver: I will withdraw the question.

Q. (By Mr. Purver): You were asked, according to your testimony, to start up the operations at

(Testimony of Alfred George Cody.)

Yorba Linda. Is that correct? A. In part, yes.

Trial Examiner Scharnikow: That was before you became a supervisor, though, wasn't it?

The Witness: Sir? [414]

Trial Examiner Scharnikow: You were just asked whether you hadn't started up Yorba Linda pumping station before you were asked in September 28th, 1948, to do so?

The Witness: You say I hadn't?

Mr. Purver: Had.

Trial Examiner Scharnikow: You testified, as I understood, that you had in the past started up the pump station there.

The Witness: Yes.

Trial Examiner Scharnikow: You yourself have done that.

The Witness: Yes.

Trial Examiner Scharnikow: Was that before you became a supervisor or after you became a supervisor?

The Witness: Before I became a supervisor.

Q. (By Mr. Purver): Now, how often?

A. At that particular station the days I worked over there they were running about 24 hours a day. At the Signal Hill station I used to shut it down and start it up over the week ends as a No. 1 pumper.

Q. And who ordinarily would start the pumps operating? A. The No. 1 pumpers.

Q. And who would fire the boilers?

A. No. 1 pumper.

Q. At Yorba Linda does that apply?

(Testimony of Alfred George Cody.)

A. Yes.

Q. Now, how often would a pumper have occasion to start the [415] boilers at Yorba Linda?

Mr. Brooks: There is no foundation that this witness knows the answer to this question. Furthermore, it is objectionable because it is very ambiguous.

Mr. Purver: Very well, I will withdraw the question.

Q. (By Mr. Purver): Do you know whether Yorba Linda prior to the strike of September, 1948, operated the pumps and the steam engine during weekends?

A. I can answer that before I went on vacation that they did.

Q. Before your vacation of August, 1948?

A. Yes.

Q. It was shut down each week end?

A. They shut down each week end.

Q. And who started them up?

A. The pumpers.

Q. Are pumpers covered by the contract?

A. Yes.

Q. Was that part of the routine operations to shut down each week end and begin the following Monday? A. Yes.

Q. Now, you testified in response to a question by Mr. Brooks that you were a participant in group life insurance. Is that correct? A. Yes.

Q. Now, do you know whether that policy you had as a part [416] of that group life insurance has

(Testimony of Alfred George Cody.)

lapsed since you left the employment of the company?

A. I don't know whether it has or hasn't.

Q. Have you taken any action regarding it one way or the other? A. No.

Q. Now, when you used the words in saying you asked for your job back, the words "a job back," did you ask for any special job? A. No.

Q. Now, how many jobs in the Pipeline Division were there that you hadn't done in your past experience of 20 years with the company?

A. In operations, in the operations end of the Pipeline Division I did everything but ride line and I did that partially as a gauger.

Q. In other words, when you asked for a job back, that meant any job that you had done before. Is that it?

Mr. Brooks: That is objected to——

Trial Examiner Scharnikow: Sustained.

Q. (By Mr. Purver): In your second conversation with Mr. Dreyer late in November, 1948, did you set up any conditions whatsoever regarding returning to work? A. No. [417]

* * * * *

Recross Examination

Q. (By Mr. Brooks): Well, I understood you to testify that there were three classifications of employees who would normally gauge tanks, as requested of you on September 28th, and that those three were pumpers, gaugers and head pumpers. I want to be sure what your testimony is in that re-

(Testimony of Alfred George Cody.)

gard. A. Gaugers and pumpers.

Q. If you said head pumpers, you did not intend to, is that right? A. That's right.

Q. You did, according to your testimony on re-direct, every kind of work in the pipe line division in the operations end, except line riding. Is that right?

A. That's job classifications under the contract?

Q. Yes. A. Yes.

Q. But you did do line riding work between September 13th and September 28th, did you not? [422]

A. With a permit by the union to do so, yes. [423]

* * * * *

HERBERT S. BEAN,

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Purver): What is your full name, sir?

A. Herbert S. Bean.

Q. What is your address?

A. 2759 Easy Avenue, Long Beach.

Q. Are you presently employed?

A. By The Texas Pipe Line Department.

Q. In what capacity?

A. Relief dispatcher and oil clerk.

Q. In what capacity were you employed by The Texas Company in the early part of September?

A. No. 1 pipefitter.

Trial Examiner Scharnikow: That is September, '48?

(Testimony of Herbert S. Bean.)

Mr. Purver: September, '48, yes.

The Witness: Yes. [424]

Q. (By Mr. Purver): Did you go out on strike on September 3rd? A. I did.

Q. In what department of the company were you at the time you went out on strike?

A. Pipe line department. [425]

* * * * *

Trial Examiner Scharnikow: Both of you have told me there is no dispute but that the company intended to resume operations at the time Dreyer and Cody and Jones spoke on September 28th. Now you are telling me that General Counsel's Exhibit 28 is simply to show that by this exhibit. Is that all you have in mind?

Mr. Purver: Yes.

Trial Examiner Scharnikow: There is no dispute about it.

Mr. Brooks: No, but I object to the letter going into the record because it is cumulative, it is irrelevant, immaterial, if it is only for that purpose. Does counsel contend that the company violated the law by starting operations?

Mr. Purver: No.

Mr. Brooks: In the early part of October?

Mr. Purver: No, that is not part of our contention. [429]

* * * * *

Q. (By Mr. Purver): Mr. Bean, in the early part of September, 1948, were you a member of any union committee?

(Testimony of Herbert S. Bean.)

A. I was on the workmen's committee, the pipe line department.

Q. At the very beginning of the strike, which is September 3rd or 4th, 1948, did your committee have any conference with any representatives of management?

A. The night of the strike we met in Mr. Jones' office—is that what you are referring to?

Q. Yes.

A. There was another committeeman besides myself present and Mr. Jones——

Trial Examiner Scharnikow: Who was the other committeeman?

The Witness: Clarence Gunning of the pipe line.

* * * * *

[430]

Trial Examiner Scharnikow: What date would that be?

The Witness: It was the deadline night. It was midnight. What was that, September 3rd, 4th? I don't know.

Q. (By Mr. Purver): The best you remember, it is either the 3rd or 4th of September?

A. Yes, that is right, either the 3rd or 4th.

Q. What was the discussion?

A. We were discussing qualifications as to who would get picket line passes, the reason for certain individuals, and it amounted to issuing passes to supervisors in all capacities, which would include or did include, as well as I can remember, all employees that weren't under the contract, junior engineers and head pumpers, firemen, it was—well,

(Testimony of Herbert S. Bean.)

naturally, the strike was in effect and we weren't going to issue passes to anybody.

Trial Examiner Scharnikow: Just tell us what the discussion was, Mr. Bean. [431]

The Witness: Well, that was what the discussion was in the course of the evening there. I couldn't quote it exactly because it was back and forth. One of the other committeemen objected to giving a pass to one of the men that was out from under the contract, so that is the only reason. That brings back the memory that we discussed the only reason we would issue passes to individuals would be because there would be no work done at that time by them.

Q. (By Mr. Purver): Now, who was it that said that?

A. That is too long ago. All I can remember is it was just discussed there by the three of us.

Q. Was anything said specifically about the work that was to be done by people who received passes?

A. No, there wasn't any work. It was for safety, fire, and other reasons for the protection of the properties of The Texas Company.

Q. Did you issue any such passes thereafter?

A. Yes.

Q. Do you remember how many?

A. No, I don't.

Q. Were those passes ever revoked?

A. Yes, they were revoked. Well, those passes were written out in long-hand and then after they were later superseded by mimeographed passes, and

(Testimony of Herbert S. Bean.)

in the course of time when operations were started by the company, they were all revoked. [432]

Q. All in the Pipeline Division?

A. Yes, just the Pipeline.

Q. Were they called in?

A. They were told as they were met at the gate—that is, when they came through the gate, they were told their passes were no longer any good—either picked up or destroyed.

Cross Examination

Q. (By Mr. Brooks): The union issued these passes, Mr. Bean?

A. Well, as a work member on the Workmen's Committee, I acted for the union.

Q. For the union? A. Yes.

Q. Give us just a brief statement of what the Workmen's Committee is.

A. They are members who are elected by vote of the employees of the Pipeline Department to represent them on the grievances and health and safety and other measures that come up during the month, as stated by the contract, to meet with the company the first Tuesday of each month.

Q. Then, the Workmen's Committee is the group representing the union which deals with management periodically on various matters that might come up concerning working conditions. Is that right? A. We represent the employees. [433]

Q. That is right, and you are elected by the employees who are in the Oil Workers International

(Testimony of Herbert S. Bean.)

Union, Local 128? A. That is right.

Q. You were the chairman of that committee at that time. Is that right? A. That is right.

Q. And was that in September of 1948?

A. Yes, sir.

Q. Since that time you have been promoted, have you not? A. Yes.

Q. When were you promoted?

A. Well, I was on a break-in basis there for a while. I don't remember the exact date. Well, let's see, maybe we ought to put it this way: I accepted the promotion the third week in August. I don't remember the exact day. I believe it was on a Thursday.

Q. About the third week in August?

A. Yes.

Q. And the job that you were promoted to and now hold is outside the bargaining unit? A. Yes.

Q. That is August, 1949? A. Yes.

Trial Examiner Scharnikow: I have one or two questions. [434]

At this meeting on the night of September 3rd or 4th you discussed the issuance of passes with Mr. Jones?

The Witness: Yes.

* * * * *

Trial Examiner Scharnikow: Was there an agreement as to what kind of work could be done by pass-holders?

The Witness: There was an agreement that there would be no movement of oil. I wouldn't want to

(Testimony of Herbert S. Bean.)

state those exact words. Well, maybe I should put it another way. Well, there just wouldn't be any work done, period.

Trial Examiner Scharnikow: Was there any discussion of why the passes were to be issued to anybody?

The Witness: Yes. The reason the passes were being issued was to make a clean—well, just a clean feeling going through the picket line to keep various supervisors that were former members of the union, or workers and others, from feeling like they were just breaking through the picket line, so to speak.

Trial Examiner Scharnikow: Well, wasn't there any discussion of why passes should be issued at all; that is, [435] why these men should go through the picket line at all?

The Witness: Well, yes. The reason for—well, the sole purpose for issuing the passes to the supervisors—as I remember, we discussed the fact, and Mr. Jones stated, representing the company, that it was for safety and fire and other necessary measures to protect the property of The Texas Company.

* * * * *

Trial Examiner Scharnikow: Was there any discussion whether there would be any movement of oil by the company?

The Witness: I don't recall. I can't recall whether there was or wasn't. Well, the statement I previously made was the reason the picket line passes were issued, was on [436] the basis there would be no

(Testimony of Herbert S. Bean.)

movement of oil or work done by these people.

Trial Examiner Scharnikow: Did anybody say that, that there would be no movement of oil?

The Witness: That is hard to pin down. I couldn't honestly say whether it was or not. [437]

* * * * *

Trial Examiner Scharnikow: In connection with the supervisory passes, did you discuss what the supervisors were [447] going to do during the strike?

The Witness: I don't believe we went into any detail. A lot of things were understood without being said, due to the fact——

Trial Examiner Scharnikow: There was no discussion about it then?

The Witness: No. [448]

* * * * *

Trial Examiner Scharnikow: Did you speak about the revocation of passes at this conference on September 3rd or September 4th?

The Witness: The best I can remember is, should there be any work done by the supervisors, the passes or pass would be revoked from that individual or individuals.

Trial Examiner Scharnikow: Now, that is what you said, is that right? That was what you or Gunning said?

The Witness: Yes.

Trial Examiner Scharnikow: What, if anything, did Jones say to that, if you can remember?

The Witness: I don't believe there was a statement. [449]

* * * * *

JOHN B. SUMMERFELT

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Purver): What is your full name, please?

A. John B. Summerfelt. [540]

* * * * *

Q. (By Mr. Purver): At the time immediately prior to the strike, what was your job with the company?

A. I was working as a well puller and doing relief work as a head well puller in the producing department, that is, the field. [541]

* * * * *

Cross Examination (Continued)

Q. (By Mr. Brooks): Mr. Summerfelt, when were you first elected to the Workmen's Committee?

A. It was about two years ago in June, I believe it was. [746]

* * * * *

Q. The strike was called by Local 128 and the International, was it not?

A. That is right. [837]

* * * * *

ELMER L. DREYER

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Brooks): State your name and address, please, Mr. Dreyer.

A. Elmer L. Dreyer, D-r-e-y-e-r, 3753 Pacific Avenue, Long Beach 7, California.

Q. What is your present position and employment?

A. I am superintendent of the pipe lines on the Pacific Coast for The Texas Company.

Q. How long have you been in that position?

A. Since January 1, 1932.

Q. How long have you been with The Texas Company?

A. Since August 13, 1925.

Q. Were you in your present position all during 1948?

A. I was.

Mr. Brooks: I will ask the reporter to mark a chart as Respondent's Exhibit 14 for identification.

(Thereupon the document above-referred to was marked Respondent's Exhibit No. 14 for identification.)

Q. (By Mr. Brooks): Mr. Dreyer, I am showing you a chart [2475] marked Respondent's Exhibit No.

(Testimony of Elmer L. Dreyer.)

14 for identification and ask you if you had this prepared at my request.

A. Yes, that chart was prepared under my direction at your request.

Q. This chart indicates that it is an operating and maintenance organization chart. What, if anything, is omitted in the organization of the pipe line division from this chart?

A. This chart shows only the operating and maintenance organization in the Los Angeles district; does not include the operating organization in the Ventura, Coalinga, or Fellows districts, nor does it include the office group.

Q. Are the office employees excluded from the bargaining contract in the pipe line division?

A. They are.

Q. Are all other positions indicated on this chart excluded from the bargaining unit?

A. No, this chart shows some occupations that are included in the bargaining unit.

Q. Where are the classifications which are included in the bargaining unit?

A. The occupations that are included in the bargaining unit are in the two blocks headed by the word "Supervise" and are listed by occupations with no names of the employees shown.

Q. That is to indicate the classifications of em-

(Testimony of Elmer L. Dreyer.)

ployees [2476] supervised by those people immediately above; is that correct?

A. That is correct.

Mr. Brooks: I offer into evidence Respondent's Exhibit No. 14.

Mr. Hackler: No objection.

Trial Examiner Scharnikow: Respondent's Exhibit 14 is admitted in evidence.

(The document heretofore marked Respondent's Exhibit No. 14 for identification was received in evidence.)

(Testimony of Elmer L. Dreyer.)

Q. (By Mr. Brooks): Briefly and generally, Mr. Dreyer, what is the function of the pipe lines division of the refining department?

A. The functions of the pipe lines division of the refining department are to collect the oil or gather in the field as produced from tanks into which it is produced by the oil wells; to collect it into storage tanks; transport the oil to the refinery as needed. We also in some instances dehydrate wet crude, that is, crude that contains water in an emulsified form. We remove the water to put the crude in the so-called dry state. We also transport natural gasoline through pipe lines from natural gasoline plants, deliver it to the refinery.

Q. There is in evidence as General Counsel's Exhibit No. 21 a map which indicates the divisions in the producing department of the Pacific Coast division, which I will now show [2477] you and ask you to tell us whether or not your jurisdiction in the pipe line division is co-extensive at all and, if so, to what extent with these producing districts.

A. The pipe line division districts are the same as the producing department, the Los Angeles Basin district, the Ventura district, the Fellows district and the Coalinga district. The pipe line division has no operations in the Sacramento district or the Humboldt district.

Q. Does your jurisdiction extend to those districts where the pipe line division does operate?

A. Yes, it does.

Mr. Brooks: I will ask the reporter to mark as

(Testimony of Elmer L. Dreyer.)

Respondent's Exhibit 15 for identification a flow chart designated at the bottom, "Diagram, Pipe Line Operations."

(Thereupon the document above-referred to was marked Respondent's Exhibit No. 15 for identification.)

Q. (By Mr. Brooks): Mr. Dreyer, did you have, under your direction and at my request, a chart prepared, indicating briefly the operations of the pipe line division? A. I did.

Q. I show you what has been marked as Respondent's Exhibit No. 15 for identification and ask you if that is the chart you had prepared?

A. It is.

Q. And so that the record will be clear regarding the [2478] respective jurisdiction regarding the pipe line division, the refinery, and the producing department, will you just describe very briefly, using the chart, the beginning and end of the jurisdiction and the operations carried on by the pipe line division, starting at the top of the chart?

A. On this chart has been indicated an oil well, its flow line, and a lease shipping tank.

Q. Where are the lease shipping tanks located?

A. These shipping tanks, and the oil wells, are located on the leases and are under the jurisdiction of the producer or producing department in the case of The Texas Company. Connected to that lease shipping tank is a valve, which is indicated by "X" on this diagram, and to that valve is connected a pipe

(Testimony of Elmer L. Dreyer.)

line which is under the jurisdiction of the pipe line department. The next item——

Q. Just a moment. Where does the jurisdiction of the pipe line division begin?

A. The jurisdiction of the pipe line division generally begins at that valve which I have already indicated.

Q. Is the shipping pump operated by the pipe line division?

A. The shipping pump is owned and installed by the pipe line division, but it is generally operated by the producing department pumper. It is maintained by the pipe line.

Q. But the pumper is usually in the producing department? [2479]

A. Usually in the producing department. It operates the pump.

Q. Go ahead.

A. From the shipping department there is a gathering line under the jurisdiction of the pipe line, leading to a pump station or storage tank farm tanks which are under the jurisdiction of the pipe line. From that point we have main line pumps and a main line through which we deliver the crude to the refinery, the pipe line's jurisdiction ending at the refinery fence.

As indicated on the second line of this diagram, we in some instances have dehydrator plants that are under pipe line jurisdiction, in which case the oil is delivered to the dehydrator plant, dehydrated, and from this plant it may be delivered by main line

(Testimony of Elmer L. Dreyer.)

pumps either to storage tanks or directly to the refinery.

Q. For what kind of oil is a dehydrator plant installed?

A. A dehydrator plant is installed and operated to dehydrate so-called wet crude. By wet crude, I mean crude oil that is emulsified with water as produced from the well and it is necessary to remove this water before the refinery can handle the crude.

The third line we have indicated a gathering line direct to the refinery, because in some instances we do deliver direct from the field to the refinery without going through any pipe [2480] line storage tanks or pump line stations.

On the bottom line has been indicated the natural gasoline pipe line through which we, that is, the pipe line division, deliver natural gasoline to the refinery.

Q. Do you have pipe lines running from Plant 5 of natural gasoline? A. We do.

Q. Do you have them from Plant 14?

A. We do.

Q. Do you have them from Plant 9?

A. The line from Plant 14 and 9 is one line, both plants delivering through the same line.

Mr. Brooks: I offer into evidence Respondent's Exhibit No. 15.

Mr. Hackler: No objection.

Trial Examiner Scharnikow: Respondent's Exhibit 15 is admitted in evidence.

(The document heretofore marked Respondent's Exhibit No. 15 for identification was received in evidence.)

(Testimony of Elmer L. Dreyer.)

Trial Examiner Scharnikow: May I ask one question?

Mr. Brooks: Yes, sir.

Trial Examiner Scharnikow: You transport gas from the field to the gasoline plants, do you?

The Witness: We do not transport the gas from the field to the gasoline plants. [2481]

Trial Examiner Scharnikow: By whom is that done?

The Witness: That is done by the gasoline division.

Q. (By Mr. Brooks): There is in the record, Mr. Dreyer, the fact that a strike occurred on September 4, 1948, among the employees of the operations of The Texas Company in Southern California, and that such strike affected the pipe line division employees.

Were you on duty on September 4th?

A. I was on vacation on that day.

Q. When did you return from vacation during that time? A. September 7th.

Q. Did you yourself personally have any conversations with any union representatives or employee representatives prior to or in the early stages of the strike regarding passes or cessation of operations?

A. I did not.

Q. Who was functioning in your absence?

A. Mr. F. A. Jones, assistant superintendent, pipe line division.

Q. For purposes of clarity, Mr. Dreyer, the flow

(Testimony of Elmer L. Dreyer.)

chart, which is Respondent's Exhibit 14, applies to only the L. A. Basin district, does it?

Trial Examiner Scharnikow: The flow chart?

Mr. Brooks: Yes.

Trial Examiner Scharnikow: That is No. 15.

Mr. Brooks: That is right.

The Witness: Some of the employees shown on that chart also have functions in other districts.

Q. (By Mr. Brooks): No, I beg your pardon, I am talking about 15, which is the flow chart of operations. What district does that cover, or districts if there is more than one.

A. That applies generally to all districts.

Q. If there are gasoline——

A. If there are all those operations in the district.

Q. In other words, the method of operation is substantially the same if all of these functions are present?

A. That is correct.

Q. The calendar for 1948, for September, indicates that the 7th was on a Tuesday. Is that your recollection of the day that you returned to the plant, or where you return on that day?

A. It is my best recollection that I returned to work in my office on September 7th, the day following Labor Day. It is possible I came back on Labor Day, but I do not believe so.

Q. What was the situation so far as you found it regarding operations of the pipe line division upon your return on or about September 7th?

A. I found most of the operations shut down.

(Testimony of Elmer L. Dreyer.)

Q. Was there, if you recall and know, any movement of oil going on at that time, namely, September 7th? [2483]

A. There were some movements of oil in the gathering system of the pipe line division.

Q. Are records kept of the shipments and movements of oil through the pipe line system?

A. Yes, very detailed records are kept.

Q. Have you checked the records for the month of September regarding the movements and shipments through the pipe line gathering facilities, that is September, 1948?

A. I have checked those records carefully for the L. A. Basin district. [2484]

Q. Just for the one district?

A. The one district.

Q. Did Mr. Cody's duties carry him in 1948 beyond the Los Angeles Basin District?

A. It did.

Q. You stated you have checked the records. Did you make any extract of those records and, if so, what did you do in that regard?

A. I noted from the record all of the gathering operations that were carried on in the Los Angeles Basin during the period September 4th to September 27th, and made a tabulation from the original records. The tabulation was typed under my direction. I checked the typed record back against the original notes, and gave you the copy of the typed record.

Mr. Brooks: I will ask the reporter to mark as

(Testimony of Elmer L. Dreyer.)

Respondent's Exhibit 16 a tabulation headed, "The Texas Company Gathering Operations."

(Thereupon the document above-referred to was marked Respondent's Exhibit No. 16 for identification.)

Q. (By Mr. Brooks): Can you identify this document which is marked Respondent's Exhibit 16?

A. Yes, this is the two-page tabulation typed under my direction showing the gathering operations in the Los Angeles Basin District from the period September 4th to September 27th, 1948. [2485]

Q. Is this the one that you personally checked against the original records? A. It is.

Q. Referring now to this chart, at the left-hand column after the first one, which indicates the date, is shown "Producer." What are the facts regarding the normal practice as to transport of oil by producers other than The Texas Company? In other words, do you or do you not normally transport oil for producers other than The Texas Company?

A. In many instances The Texas Company purchases crude from other producers. We transport it for The Texas Company. We seldom transport it for other people, however.

Q. Then these companies or individuals indicated on the second column on the left indicate the producer of the oil and from whom The Texas Company procured it. Is that correct?

A. That is correct.

(Testimony of Elmer L. Dreyer.)

Q. What does the second column mean? That would be the third column.

A. The third column is the lease name or other identification of the producer. Many producers from whom we purchase oil have numerous leases, and that column identifies which particular property or lease the oil in question as shown on this tabulation was shipped.

Q. The third column, then, means the sources of that oil. Is that correct? [2486]

A. That indicates the oil field from which it was shipped.

Q. That is the fourth column showing the field?

A. That is the fourth column, correct.

Q. I notice in the middle column you have indicated, "Gauged And/Or Sampled And/Or Tested By." What if any other normal so-called production type work is performed in connection with shipment and movement of oil in this fashion besides what you have indicated, namely, gauged, sampled, or tested?

A. The only other operation would be the actual shipping of the oil, the operation of the shipping pump.

Q. The operation of the pump?

A. That is correct.

Q. Then you have indicated in the column to the right of the middle one who operated the pump. Is that correct?

A. That is correct.

Q. What is a run ticket and its functional purpose?

A. A run ticket is a form on which blank spaces

(Testimony of Elmer L. Dreyer.)

are provided and in which spaces figures are recorded showing the amount of oil, the gauge, and the temperature, quality of the crude, producer's name, the field from which it is shipped, and all other data necessary to compute the amount to be paid for the crude shipped.

Q. What is meant by the last column on the right, "Facilities Used"? [2487]

A. That column shows whether or not it was Texas Company gathering lines, pumps, or any other equipment that may have been used to ship the oil indicated in the previous columns.

Trial Examiner Scharnikow: That, of course, is on Respondent's Exhibit 16 for identification?

Mr. Brooks: Right, sir.

I offer Respondent's Exhibit 16 into evidence.

Mr. Hackler: No objection.

Trial Examiner Scharnikow: Respondent's Exhibit 16 is admitted in evidence.

(The document heretofore marked Respondent's Exhibit No. 16 for identification was received in evidence.)

THE TEXAS COMPANY GATHERING OPERATIONS
LOS ANGELES BASIN
SEPTEMBER 4 TO 27, 1948, INCLUSIVE

Date Sept. 1948	Producer	Lease Name or Other Identification	Field	Gauged and/or Sampled and/or Tested by	Pump Operated by	Texas Co. Run Ticket Issued or Signed by	Facilities Used
17	Davis Investment Co.	Well No. 19	Signal Hill	J. R. Letson	Davis Investment Co. Employee	J. R. Letson	Texas Co. gath. pump & line
24	Jergins Oil Co.	City	Signal Hill	J. R. Letson	Jergins Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
24	Jergins Oil Co.	City	Signal Hill	J. R. Letson	Jergins Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
25	Jergins Oil Co.	City	Signal Hill	J. R. Letson	Jergins Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
25	Jergins Oil Co.	City	Signal Hill	J. R. Letson	Jergins Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
26	Jergins Oil Co.	City	Signal Hill	J. R. Letson	Jergins Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
26	Jergins Oil Co.	City	Signal Hill	J. R. Letson	Jergins Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
27	Jergins Oil Co.	City	Signal Hill	J. R. Letson	Jergins Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
27	Jergins Oil Co.	City	Signal Hill	J. R. Letson	Jergins Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
16	The Texas Company	Redondo Improve. Co.	Torrance-Redondo	Stand. Oil Co.	Texas Co. Prod. Dept. Employee	A. Payse	Texas Co. gath. pump & line
22	The Texas Company	Redondo Improve. Co.	Torrance-Redondo	Stand. Oil Co.	Texas Co. Prod. Dept. Employee	A. Payse	Texas Co. gath. pump & line
22	Zenith Oil Co.	Petifils	Torrance-Redondo	Stand. Oil Co.	Zenith Oil Co. Employee	None	Texas Co. gath. line— Zenith Oil Co. Pump
26	The Texas Company	Redondo Improve. Co.	Torrance-Redondo	Stand. Oil Co.	Texas Co. Prod. Dept. Employee	A. Payse	Texas Co. gath. pump & line
4	British Amer.-Texas Co.	Park Community	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
5	British Amer.-Texas Co.	Bodger No. 1 and No. 3	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
5	British Amer.-Texas Co.	Park Bodger	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
6	British Amer.-Texas Co.	Village Community	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
8	British Amer.-Texas Co.	Bodger No. 1 and No. 3	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
10	British Amer.-Texas Co.	Park Community	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
10	British Amer.-Texas Co.	Village Community	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
11	British Amer.-Texas Co.	Bodger No. 1 and No. 3	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
12	British Amer.-Texas Co.	Bodger No. 1 and No. 3	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
12	British Amer.-Texas Co.	Park Bodger	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
14	British Amer.-Texas Co.	Park Community	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
14	British Amer.-Texas Co.	Village Community	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
15	British Amer.-Texas Co.	Bodger No. 1 and No. 3	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
16	British Amer.-Texas Co.	Park Bodger	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
19	British Amer.-Texas Co.	Bodger No. 1 and No. 3	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
19	British Amer.-Texas Co.	Village Community	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
21	British Amer.-Texas Co.	Park Community	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
23	British Amer.-Texas Co.	Bodger No. 1 and No. 3	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
23	British Amer.-Texas Co.	Park Bodger	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
23	British Amer.-Texas Co.	Village Community	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
24	British Amer.-Texas Co.	Bodger No. 1 and No. 3	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
24	British Amer.-Texas Co.	Park Community	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
25	British Amer.-Texas Co.	Bodger No. 1 and No. 3	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
26	British Amer.-Texas Co.	Village Community	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
27	British Amer.-Texas Co.	Park Bodger	Alondra	Stand. Oil Co.	British Amer. Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
15	The Texas Company	Moynier	Inglewood	Stand. Oil Co.	Texas Co. Prod. Dept. Employee	A. Payse	Texas Co. gath. pump & line
21	A. T. Jergins Oil Co.	Oscar Howard	Inglewood	Stand. Oil Co.	A. T. Jergins Oil Co. Employee	None	Texas Co. gath. pump & line
27	The Texas Company	Moynier	Inglewood	Stand. Oil Co.	Texas Co. Prod. Dept. Employee	A. Payse	Texas Co. gath. pump & line
8	J. H. Marion	Cole No. 4	Huntington Beach	SoCal*	J. H. Marion Employee	J. R. Letson	Texas Co. gath. pump & line
8	J. H. Marion	Cole No. 4	Huntington Beach	SoCal*	J. H. Marion Employee	J. R. Letson	Texas Co. gath. pump & line
14	The Texas Company	Volmer-Neyers	Huntington Beach	SoCal*	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
14	The Texas Company	Columbia	Huntington Beach	J. R. Letson	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
15	Termo Oil Co.	Termo No. 5	Huntington Beach	SoCal	Termo Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
20	The Texas Company	Brown	Huntington Beach	SoCal	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line

* SoCal—SoCal Oil and Refining Corp.

Respondent's Exhibit No. 16—(Continued)

THE TEXAS COMPANY GATHERING OPERATIONS
LOS ANGELES BASIN
SEPTEMBER 4 TO 27, 1948, INCLUSIVE

Date Sept. 1948	Producer	Lease Name or Other Identification	Field	Gauged and/or Sampled and/or Tested by	Pump Operated by	Texas Co. Run Ticket Issued or Signed by	Facilities Used
20	The Texas Company	Elliott	Huntington Beach	SoCal	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
22	Termo Oil Co.	Termo No. 5	Huntington Beach	SoCal	Termo Oil Co. Employee	J. R. Letson	Texas Co. gath. pump & line
23	The Texas Company	Towers	Huntington Beach	J. R. Letson	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
27	The Texas Company	Pierce	Huntington Beach	SoCal	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
27	The Texas Company	Brown	Huntington Beach	SoCal	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
9	The Texas Company	Krug	Richfield	Texas Co. Prod. Dept.	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
9	The Texas Company	Krug	Richfield	Texas Co. Prod. Dept.	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
9	The Texas Company	Bradford No. 1	Richfield	Texas Co. Prod. Dept.	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
9	The Texas Company	Bradford No. 2	Richfield	Texas Co. Prod. Dept.	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
10	The Texas Company	Isaac	Richfield	Texas Co. Prod. Dept.	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
10	The Texas Company	Isaac	Richfield	Texas Co. Prod. Dept.	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
10	Arrowhead Oil Co.	Bradford	Richfield	J. R. Letson	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
11	The Texas Company	Krug	Richfield	Texas Co. Prod. Dept.	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
11	The Texas Company	Richfield-Consolidated	Richfield	Texas Co. Prod. Dept.	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
12	The Texas Company	Yarnell	Richfield	Texas Co. Prod. Dept.	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
13	The Texas Company	Bradford No. 1	Richfield	Texas Co. Prod. Dept.	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
14	The Texas Company	Bradford No. 1	Richfield	Texas Co. Prod. Dept.	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
14	The Texas Company	Krug	Richfield	Texas Co. Prod. Dept.	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
15	The Texas Company	Bradford No. 2	Richfield	Texas Co. Prod. Dept.	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
18	The Texas Company	Bradford No. 1	Richfield	Texas Co. Prod. Dept.	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
19	Arrowhead Oil Co.	Bradford	Richfield	J. R. Letson	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
20	The Texas Company	Yarnell	Richfield	Texas Co. Prod. Dept.	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
20	The Texas Company	Krug	Richfield	Texas Co. Prod. Dept.	Texas Co. Prod. Dept. Employee	J. R. Letson	Texas Co. gath. pump & line
17	The Texas Company	Wickman	Santa Fe Springs	J. R. Letson	J. R. Letson	J. R. Letson	Texas Co. gath. pump & line
17	The Texas Company	Standlee	Santa Fe Springs	J. R. Letson	J. R. Letson	J. R. Letson	Texas Co. gath. pump & line
17	The Texas Company	Matern No. 2	Santa Fe Springs	J. R. Letson	J. R. Letson	J. R. Letson	Texas Co. gath. pump & line
17	The Texas Company	Foix	Santa Fe Springs	J. R. Letson	J. R. Letson	J. R. Letson	Texas Co. gath. pump & line
17	The Texas Company	Baldwin	Santa Fe Springs	J. R. Letson	J. R. Letson	J. R. Letson	Texas Co. gath. pump & line
21	Juanita E. O'Melia	Seward Rideout	Whittier Hills	J. R. Letson & R. Hight	Gravitated—Valves opened by J. R. Letson	J. R. Letson & R. Hight	Texas Co. gathering line
23	Juanita E. O'Melia	Seward Rideout	Whittier Hills	J. R. Letson	Gravitated—Valves opened by J. R. Letson	J. R. Letson	Texas Co. gathering line
27	Juanita E. O'Melia	O'Donnell No. 1	Whittier Hills	J. R. Letson	Gravitated—Valves opened by J. R. Letson	J. R. Letson	Texas Co. gathering line
27	Juanita E. O'Melia	Seward Rideout	Whittier Hills	J. R. Letson	Gravitated—Valves opened by J. R. Letson	J. R. Letson	Texas Co. gathering line
4	Standard Oil Co.*	G-55 Community	Wilmington	Ray Eaton†	Producer's Employee	Ray Eaton	Stand. Oil Co. and Texas Co. gathering lines

4 Approximately 47 shipments from Jergins Oil Co., Superior Oil Co. and Pioneer Drilling Co. leases in the Wilmington Field were made into General Petroleum Corp. pipe line. Of these, 28 shipments were for account of The
to Texas Company. Branch lines through which deliveries were made into General Petroleum system are owned by The Texas Company, or in some cases 50% by Texas and 50% by Superior Oil Co. Approximately one-half the
27 pumps used are owned by Texas and approximately one-half are owned by Superior, each of these companies using the other's pumps as necessary. Gauging, sampling and testing was done by General Petroleum
employees, and copies of General Petroleum run tickets were picked up by Texas Company employee. This is the regular, usual operation. The only variation was that General Petroleum run tickets were picked up in Sep-
tember, 1948, by J. R. Letson and E. L. Dreyer, whereas these tickets would normally be picked up by a Texas Company Field Gauger.

** Standard received from independent producer and delivered directly from lease to The Texas Company on exchange.

† The Texas Company Field Gauger.

(Testimony of Elmer L. Dreyer.)

Mr. Brooks: I will ask the reporter to mark as Respondent's Exhibit No. 17 for identification a form entitled "The Texas Company Run Ticket."

(Thereupon the document above-referred to was marked Respondent's Exhibit No. 17 for identification.)

Q. (By Mr. Brooks): Mr. Dreyer, I show you Respondent's Exhibit No. 17 for identification, and ask you to tell us what that is.

A. That a Texas Company run ticket.

Q. Is that a form of the run ticket you were just describing a little bit ago? A. It is.

Q. Are copies kept of these run tickets? [2488]

A. Yes.

Q. Describe very briefly, using the ticket that is before you, the manner in which these are prepared and what is done with them.

A. These run tickets are bound in books in sets numbered consecutively, and the books are in the hands of the field gaugers.

Q. Who prepares the run tickets?

A. A run ticket is prepared by the field gauger.

Q. What does he do with it?

A. At each tank to be shipped from the lease, after he has gauged and sampled the tank, he fills out the run ticket, indicating thereon all the data called for on the run ticket, monthly run number, type of crude, shows who the producer is, that is, who we receive the crude from.

Q. Well, that is all shown on the ticket?

(Testimony of Elmer L. Dreyer.)

A. That is all shown on the run ticket. He fills in all that data.

Q. After the gauger prepares that, what does he do with it?

A. The original copy is given to the producer, one copy stays in the book for permanent record, in his run ticket book, the other copies are sent in by the company mail to the office and distributed further from that point.

Q. There are a total of how many copies made out?

A. The run ticket books are printed with five copies in each [2489] set. In some instances additional copies are necessary, and in that event we have extra forms that can be interspaced in the book to make additional copies when more than five are required.

Q. Is each carbon different in color or are they the same?

A. Each carbon is different in color until after you get over the sixth; then the seventh would be the same color as the sixth.

Mr. Brooks: I offer into evidence Respondent's Exhibit No. 17.

Mr. Hackler: No objection.

Trial Examiner Scharnikow: Respondent's Exhibit 17 is admitted.

(The document heretofore marked Respondent's Exhibit No. 17 for identification was received in evidence.)

RESPONDENT'S EXHIBIT No. 17

FORM PL-171B 1M BKS. 7-48

THE TEXAS COMPANY

RUN TICKET

Monthly Run No. _____

20426

Oil Type _____

Field _____

Date _____ 194

(RUN STARTED)

Received from _____

For Account of _____

Exchange No. _____

Delivered to _____

The following Oil in bulk of 42 U. S. Gallons per barrel.

TANK No.			Lease			
SIZE			Sec. T. R.			
	FEET	INCHES	GROSS BARRELS		TEMP.	BBLs. AT 60°F
Opening Gauge						
Closing Gauge						
OIL RUN						
B. S. & Water			% Deductions			
NET OIL RUN						

GRAVITY OF TANK SAMPLE				Price
Observed Gravity		A. P. L. at	°F	Per Bbl. \$
Corrected Gravity		A.P.L. at	60°F	Value \$

Steam or Power Furnished By:

Opening Gauge		For
DATE	194	Seller
TIME	M.	For Buyer
Closing Gauge		For
DATE	194	Seller
TIME	M.	For Buyer

CALCULATED BY

VERIFIED BY

ORIGINAL

(Testimony of Elmer L. Dreyer.)

Q. (By Mr. Brooks): What is a strapping report? Reference has been made in the record to strapplings.

A. The strapping report or strapping is a record on which we indicate the measurements of the tank that are taken by engineers to determine the capacity of the tank. Tank strapping is used to prepare the tank table.

Mr. Brooks: I will ask the reporter to mark as Respondent's Exhibit No. 18 a form entitled "The Texas Company Tank Strapplings."

(Thereupon the document above-referred to was marked Respondent's Exhibit No. 18 for identification.) [2490]

Q. (By Mr. Brooks): What is this form which has been marked as Respondent's Exhibit 18 for identification?

A. This form is a copy of The Texas Company Strapplings Report.

Q. For what purpose is that used?

A. That is used for recording the measurements made on a new tank or tank which has had extensive repairs made to it.

Q. Who enters the data on one of these reports?

A. In the Los Angeles Basin District this data is usually entered by an engineer or a junior engineer.

Q. What is done with the information that is on the tank strapping report?

A. That information, or a copy of the tank strapplings report with the information filled in it is

(Testimony of Elmer L. Dreyer.)

mailed to our Houston office, where the tank strapings are used to compute and compare tank tables.

Q. Are tank tables prepared in your office or in your district?

A. No, we do not prepare them here.

Q. Do you have tank tables which are used in your office at all?

A. Yes, we have many tank tables.

Q. What are they made from?

A. Tank tables are made from the tank strapings.

Mr. Brooks: I offer in evidence Respondent's Exhibit 18. [2491]

Mr. Hackler: No objection.

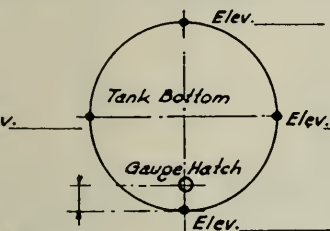
Trial Examiner Scharnikow: Respondent's Exhibit No. 18 is admitted in evidence.

(The document heretofore marked Respondent's Exhibit No. 18 for identification was received in evidence.)

THE TEXAS CO
TANK STRAPPINGS

FORM G-232 BC 12-46

PREVIOUS NO. _____
REGISTERED NO. _____
DEPARTMENT _____ MFR. _____
DIRECTED _____ FOR _____
WELL _____ ROOF _____ FDTN. _____
X. TYPE _____ NO. OF RINGS _____ VERT. _____
HORIZ. _____



FIELD SKETCH IF REQUIRED

NEW NO. _____
OWNED BY _____ SIZE _____
STRAPPED BY _____ DATE _____
LOCATION _____

PREVIOUS LOCATION

REASONS FOR RE-STRAPPING.

DEADWOOD

LOCATION		Ac.s.	DESCRIPTION
From	To		

NATIONAL LABOR RELATIONS BOARD

CASE NO. 9-A-215 EXHIBIT NO. 18

IN THE MATTER OF *Texas Co.*

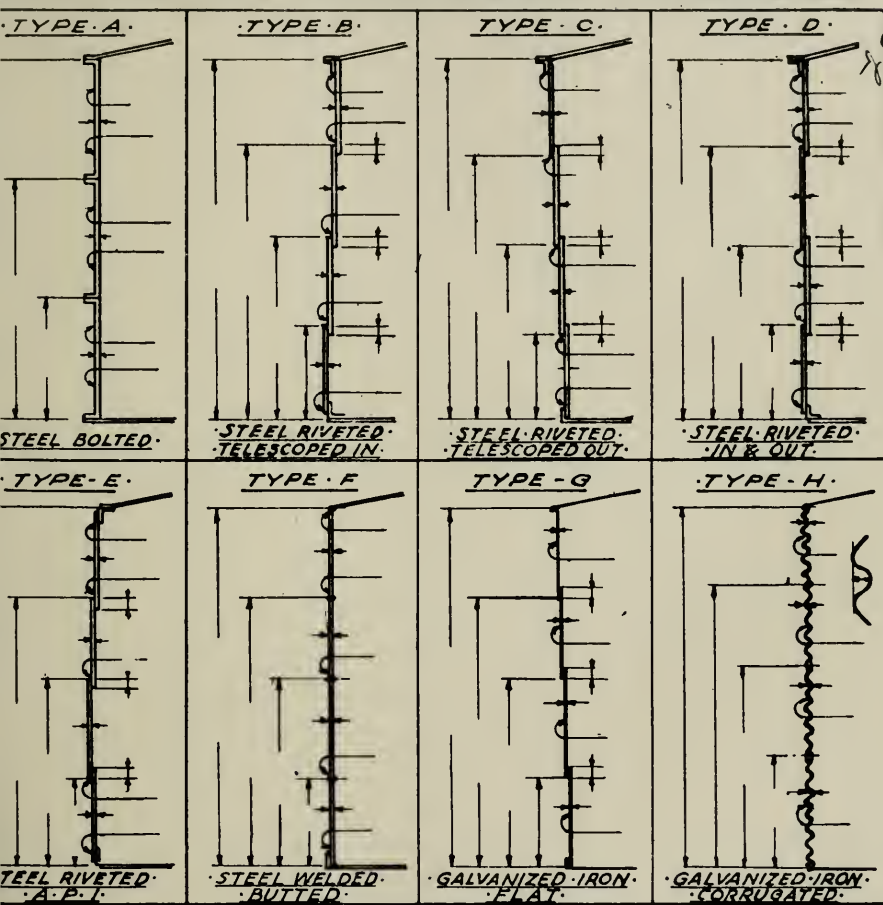
DATE 11/18/44 WITH *Greene*

ETHEL F. FISHER Obituary Reporter

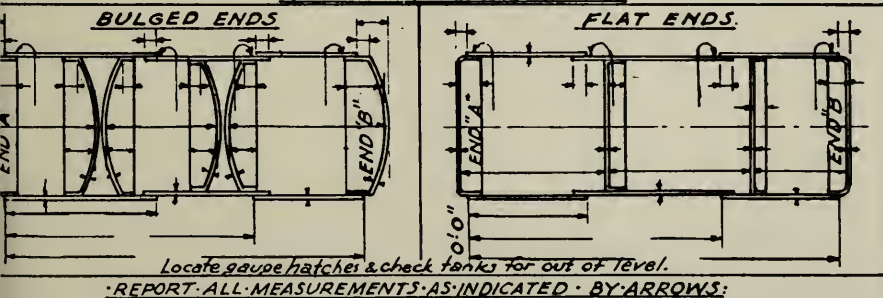
BY Gen. Reporting Co.

35a

TYPICAL TANK TYPE SHOWING MEASUREMENTS REQUIRED



HORIZONTAL TANKS.



(Testimony of Elmer L. Dreyer.)

Trial Examiner Scharnikow: By the last few questions and answers, Mr. Dreyer, do you mean that in some cases the tank tables are prepared in the Los Angeles Basin District?

The Witness: No, sir. The tables are not prepared in the Los Angeles Basin District. The strap-pings are made, of course, where the tank is located, and the data is then sent to Houston for the computations and preparation of the tank tables.

Trial Examiner Scharnikow: All of the tank tables are prepared in Houston?

The Witness: Yes, sir. We might make photostatic copies or something like that.

Mr. Brooks: I will ask the reporter to mark as Respondent's Exhibit 19 for identification a three-page report, photostatic copy thereof, which is entitled, "The Texas Company, Wilson Community Lease, Torrance Field."

(Thereupon the document above-referred to was marked Respondent's Exhibit No. 19 for identification.)

Q. (By Mr. Brooks): What is the Respondent's Exhibit 19 for identification, Mr. Dreyer? [2492]

A. This is a typical tank table as prepared for use on our various tanks, this one being for what we call a 1,500-barrel lease tank.

Q. I note the date on this, Mr. Dreyer, over to the right-hand side up toward the top, "Date Strapped, 8-29-1940." Is the same type of report used now?

A. Yes, sir.

Q. From what is the information contained on Re-

(Testimony of Elmer L. Dreyer.)
spondent's Exhibit No. 19 for identification obtained?

A. Will you read the question?

(The question was read.)

The Witness: The information necessary to compute the tank table is obtained from the tank strap-pings.

Q. (By Mr. Brooks): Who prepares this tank table?

A. The tank tables now are prepared in our Houston office.

Q. Since when have they been prepared there?

A. For the past six or seven years.

Q. Are they then returned to the Los Angeles office at any time?

A. Copies of the tank table are then returned to us at my office in Wilmington.

Q. And what, if anything, do you do with those copies returned?

A. We distribute those copies, at least one copy going to the Los Angeles office, one copy to the field office, producing [2493] department, and in the case of an outside producer, at least one copy to that outside producer. We would retain a copy in our office.

Mr. Brooks: I offer Respondent's Exhibit 19, with the statement that it is not offered for the purpose of showing the information which has been filled into the form, but is merely to indicate the form used.

Mr. Hackler: I have no objection to its being received. The exhibit consists of a three pages, but covers a single tank?

(Testimony of Elmer L. Dreyer.)

Mr. Brooks: It is Tank No. 797, and I put the whole thing here, because on the first page, at the bottom right-hand corner, it says "One of Three," the next one is "Two of Three," and "Three of Three," just to show the whole form. It is all one.

Mr. Hackler: All one tank?

Mr. Brooks: That is right.

Trial Examiner Scharnikow: Respondent's Exhibit No. 19 is admitted in evidence.

(The document heretofore marked Respondent's Exhibit No. 19 for identification was received in evidence.)

Q. (By Mr. Brooks): Mr. Dreyer, you have testified that Respondent's Exhibit 16 indicates the operations and shipments and movements of The Texas pipe line division gathering facilities from September 4th to September 27th. Was there [2494] a change at or about September 27th in the operations?

A. Yes; shortly after September 27th, I think, the operations increased.

Q. Did you, on or about September 27th, receive any information or instructions from higher authority regarding that?

A. I did.

Q. What was it?

A. The instructions I received at that time were to the effect that we should——

Mr. Hackler: May we more particularize this? I haven't objected to vagueness, but it appears now it is going to be quite vague.

(Testimony of Elmer L. Dreyer.)

Trial Examiner Scharnikow: I would suggest you find out from whom.

Mr. Hackler: From whom and the usual information.

Q. (By Mr. Brooks): You have stated this was on or about September 27th?

A. That is correct.

Q. Will you tell us from whom you received it and what the instructions were?

A. I received instructions from Mr. B. O'Connor, manager of the pipe line division, to prepare to deliver more crude to the refinery, that operations were going to be resumed at the refinery, and that field operations would be stepped up; [2495] that we should be prepared to handle the crude.

Q. Prior to that time, September 27th or thereabouts, did the persons shown on the chart, Respondent's Exhibit No. 14, work regularly on a schedule with the exception of the bottom block in the two left-hand columns? A. They did.

Q. Did the office employees who are shown on the chart and who you have testified were not included in the bargaining unit work regularly during this period of September?

A. They did, with the exception of Sundays, when they were unable to get through the picket line.

Q. Was there any change made in the schedule of these persons who had been working prior to September 27th?

A. Yes, with the exception of Mr. O'Connor, the manager, who went on to a longer workweek.

(Testimony of Elmer L. Dreyer.)

Q. Did you issue instructions for such a change?

A. Yes.

Trial Examiner Scharnikow: When was that?

Q. (By Mr. Brooks): When was that?

A. Those instructions were issued on or about September 27th. They may have extended over several days, getting the instructions to all employees involved.

Q. Whom did you instruct to disseminate this information?

A. In some cases I gave the information direct to the employees. Mr. F. A. Jones, the assistant superintendent, [2496] instructed most of them.

Q. Did this change in schedule apply to all or only a portion of those employees not covered by the agreement?

A. The change in schedule applied to all employees not covered by the agreement.

Q. This change in schedule, then, would apply to everyone on this chart below Mr. O'Connor, with the exception of the two columns headed by the word "Supervise"?

A. With those exceptions, with the exception of the block headed "Relief Oil Dispatcher," because those two men were no longer working as of September 27th.

Mr. Hackler: Read the question and answer.

(The record was read.)

Q. (By Mr. Brooks): The change in schedule applied to persons not indicated on this chart?

(Testimony of Elmer L. Dreyer.)

A. Yes, it applies to the office of the people not indicated on the chart.

Q. Was there any change made at or about September 27th regarding the functions of the persons who were working who were not covered by the agreement? A. Yes. [2497]

Q. What were the instructions regarding those changes and to whom made and by whom?

Mr. Hackler: You mean, on or about September 27th?

Mr. Brooks: Yes.

The Witness: In accordance with instructions that had been given to me by Mr. O'Connor, I issued instructions to Mr. Jones, who in turn prepared the schedule which I approved and together men were instructed in detail to the work for handling further operation duties.

Q. (By Mr. Brooks): Were there any changes made, and if so what, regarding the method of patrol?

Mr. Hackler: May I ask a voir dire question, Mr. Examiner?

Trial Examiner Scharnikow: On this particular question?

Mr. Hackler: On this particular question, yes.

Trial Examiner Scharnikow: Yes, you may.

Voir Dire Examination

Q. (By Mr. Hackler): Mr. Dreyer, were these schedules that you say Jones prepared at your direction and which were approved by you in writing?

A. Yes.

Mr. Brooks: Excuse me. I think it is not under-

(Testimony of Elmer L. Dreyer.)

stood. Do you mean the schedules in writing or were the instructions in writing?

Mr. Hackler: He said he issued instructions to Jones to prepare some schedules for work that he described, and my [2498] question was if those schedules were in writing and he said that they were and were approved by you, Mr. Dreyer?

The Witness: That is correct.

Mr. Brooks: You understood he meant schedules?

The Witness: I understood the actual schedules, not the instructions.

Mr. Hackler: Then I will object to the question as not the best evidence of what change in scheduling of work took place at that time.

Trial Examiner Scharnikow: I think that is so.

Mr. Brooks: That is all right. It is a preliminary question. I will furnish them.

May we take our recess at this time?

Trial Examiner Scharnikow: Will will take a 10-minute recess.

(Short recess taken.)

Mr. Brooks: I request the reporter to mark for identification as Respondent's Exhibit 20, three yellow sheets subdivided as follows:

20-A: "Schedule Supervisors, Week 9-13—9-19."

20-B: "Schedule Supervisors 9-20—9-26."

20-C: "Schedule Supervisors 9-27—10-3."

(Thereupon the documents above-referred to were marked Respondent's Exhibits 20-A, 20-B and 20-C for identification.)

(Testimony of Elmer L. Dreyer.)

Q. (By Mr. Brooks): Mr. Dreyer, I show you what has been [2499] marked for identification as Respondent's Exhibit 20-A, B and C. Do you know who prepared the first page, 20-A?

A. It was prepared by Mr. F. A. Jones.

Q. When?

A. Shortly preceding the 13th of September.

Q. Do you know who prepared 20-B?

A. Mr. F. A. Jones.

Q. When?

A. During the week preceding September the 20th.

Q. Do you know who prepared 20-C?

A. Mr. F. A. Jones.

Q. When?

A. On or about September the 27th.

Q. Did you see Exhibit 20-A on or before September 13th, and if before, how long before?

A. I don't remember exactly. I did see it before September the 13th probably a few days.

Q. Did you see Exhibit 20-B on or before the 20th, and if before, when?

A. I did see it before the 20th of September, probably two or three days before.

Q. What about Exhibit 20-C?

A. I saw that schedule on or about September 27th at the time it was prepared.

Q. Did you approve each and every one of these schedules? [2500] A. I did.

Q. There is no written indication of your approval on there, is there? A. No, sir.

(Testimony of Elmer L. Dreyer.)

Q. Do you remember approving them?

A. I approved them orally, because in discussing them there were some minor changes made at my request.

Mr. Brooks: I offer into evidence Respondent's Exhibits 20-A through C.

Mr. Hackler: No objection.

Trial Examiner Scharnikow: Respondent's Exhibits 20-A through 20-C are admitted in evidence.

(The documents heretofore marked Respondent's Exhibits 20-A through 20-C for identification were received in evidence.)

SCHEDULE SUPERVISORS - WEEK 9/13- 9/19

	MON. 9/13	TUES 9/14	WED. 9/15	THURS. 9/16	FRI. 9/17	SAT. 9/18	SUN. 9/19
		24 HR. PATROL					
MND - 8 ⁰⁰	CODY	CODY	CODY	HIGHT	HIGHT	CODY	CODY
P - 4 ⁰⁰	ROGERS	ROGERS	ROGERS	ROGERS	HUSD	LETSON	LETSON
B - 12 ⁰⁰	HUSD	HUSD	REDDING	REDDING	REDDING	REDDING	REDDING
		LOS ALAMITOS TANK FARM					
Q - 4 ⁰⁰	HARDIN	HARDIN	HUSD	HUSD	HARDIN	HARDIN	HARDIN
		OFFICE					
	MUNSELL LETSON	MUNSELL HIGHT	MUNSELL HIGHT	MUNSELL LETSON	LETSON	—	—

NATIONAL LABOR RELATIONS BOARD

CASE NO. 24-1A-216 ^{RESPONDENT} EXHIBIT NO. 20-AIN THE MATTER OF Texas Co.DATE 11/18/44 V. DreyerETHEL E. MILLER, OFFICIAL REPORTER
BY Gen. Reporting Co.Days off for labor dayHardin - 9/6
Munsell - 9/17Hight - 9/13
Rogers - 9/17

Sept 20

PHI

AJ

SCHULKE - SUPERVISORS '20-9/26

	MON 9/20	TUES 9/21	WED 9/22	THURS 9/23	FRI 9/24	SAT. 9/25	SUN 9/26
		24 HR. PATROL					
2 ⁰⁰ - 8 ⁰⁰ A	HUSO	HUSO	REDDING	REDDING	REDDING	HUSO	HUSO
8 ⁰⁰ - 4 ⁰⁰ P	CODY	CODY	CODY	CODY	HUSO	ROGERS	ROGERS
4 ⁰⁰ - 12 ⁰⁰ MID	REDDING	ROGERS	ROGERS	ROGERS	CODY	REDDING	REDDING
		LOS ALAMITOS TANK FARM					
0 ⁰⁰ - 4 ⁰⁰ P	HARDIN	HARDIN	HUSO	HARDIN	HARDIN	HARDIN	HARDIN
		OFFICE					
Mumrell Hight Letcher	Mumrell Hight Letcher	Mumrell Hight Letcher	Mumrell Hight Letcher	Mumrell Hight Letcher	Mumrell Hight Letcher	— — —	— — —

NATIONAL LABOR RELATIONS BOARD

CASE NO. CA-45 EXHIBIT NO. 20-B
 IN THE MATTER OF Texas Co.
 DATE 11/18/48 WITNESSES Stacy
 ETHEL F. FISHER, OFFICIAL REPORTER
 BY Don Reporting Co.

Days off for 9/6

Hardin - 9/6
 Cody - Vac.
 Mumrell - 9/17
 Hight - 9/13
 Rogers - 9/17
 Huso - ok
 Redding - ok

R. P. 20

SCHEDULE SUMMARY 20 7/27-10/3

	MON 9/27	TUE 9/28	WED 9/29	THU 9/30	FRI 10/1	SAT 10/2	SUN 10/3
	24HR FEEDING						
- 7 ⁰⁰ _L	HIGHT	HUSO	HUSO	HUSO	HUSO	HUSO	HUSO
- 7 ⁰⁰ _P	ROGERS	ROGERS	ROGERS	ROGERS	HIGHT	ROGERS	ROGERS
- MID	HUSO	HUSO	HUSO	HUSO	HUSO	HUSO	HUSO
	LOS ALGAMITOS						
7 ⁰⁰ _P	HARDIN FEEDING	HARDIN FEEDING	HARDIN FEEDING	HARDIN FEEDING	HARDIN FEEDING	HIGHT REDDING	HARDIN REDDING
	MUNSELL						
7 ⁰⁰ _P	MUNSELL	MUNSELL	MUNSELL	MUNSELL	MUNSELL	MUNSELL	MUNSELL
	LETSON						
	LETSON						

INDEPENDENT'S EXHIBIT No. 20-C

HIGHT	7	12	12	12	12	12	5	= 72
ROGERS	12	12	12		12	12	12	= 72
HUSO	5	12	12	12	12	12	7	= 72
COPY	-	12	5	12	12	12	12	= 65
HARDIN	12	12	12	12	12	-	12	= 72
LETSON	12	12		12	12	12	12	= 72

P.P.C.
20

(Testimony of Elmer L. Dreyer.)

Mr. Brooks: I ask leave to withdraw the exhibits for photostating purposes.

Trial Examiner Scharnikow: No objection, Mr. Hackler?

Mr. Hackler: None.

Mr. Brooks: And with leave to substitute a photostat.

Mr. Hackler: No objection.

Trial Examiner Scharnikow: Permission is granted.

Q. (By Mr. Brooks): Referring to Respondent's Exhibit 20-A, Mr. Dreyer, I note no oil dispatchers' names on there. Is that correct?

A. That is correct. [2501]

Q. Referring to 20-B, I note no oil dispatchers' names on there. Is that correct?

A. That is correct.

Q. Is the same true of 20-C? A. Yes.

Q. Were the oil dispatchers working during the week 9-13 to 9-19? A. They were.

Q. Do you have any explanation as to why they are not on that schedule?

A. During that week they were working on their regular schedule. These are special schedules that were prepared to fit a special case, special instance.

Q. Were schedules of the supervisory force whose names appear on Respondent's Exhibit 20-A, with the exception of Cody, prepared for weeks previous to 9-13 to 9-19?

A. They were prepared for the week preceding September the 13th, but such schedules were generally not prepared for the time preceding the strike.

(Testimony of Elmer L. Dreyer.)

Q. It is in the record that Mr. Cody was not working the week preceding the 13th. Is that your recollection? A. That is correct.

Q. The same kind of schedule was prepared for the week preceding 9-13, is that right?

A. That is right. [2502]

Q. Did you at any time during the strike prepare schedules for the oil dispatchers?

A. Such schedules were prepared and I approved them.

Q. When was that first done?

A. To the best of my recollection, that was first done for the week starting September the 17th.

Q. Was that in connection with this decision to operate on a 12-hour day?

A. That is correct.

Mr. Brooks: Will the reporter mark for identification as Respondent's Exhibit No. 21 a one-page tabulation entitled "Dispatchers Schedule."

(Thereupon the document above-referred to was marked Respondent's Exhibit No. 21 for identification.)

Q. (By Mr. Brooks): I show you Respondent's Exhibit 21 for identification, Mr. Dreyer. What is that?

A. That is a schedule for the dispatchers for the week October 4th to the 10th, inclusive, 1948.

Q. Who prepared that?

A. That schedule was prepared by Mr. J. J. Evans, chief dispatcher.

Q. Did you approve it? A. I did.

(Testimony of Elmer L. Dreyer.)

Q. When?

A. A few days before the 4th. [2503]

Q. Was a schedule similar to that prepared for the preceding week?

A. I am not sure. I think there was.

Q. Have you during the recess searched to see if you could find one in your brief case that you have with you?

A. I did.

Q. Did you find one?

A. No.

Mr. Brooks: Mr. Examiner, we will endeavor to locate the one that was made, if one was made. It is the understanding or impression now from Mr. Jones, I am told, that such was. If we find it, we will produce it.

I offer into evidence Respondent's Exhibit 21.

Mr. Hackler: No objection.

Trial Examiner Scharnikow: Respondent's Exhibit 21 is admitted in evidence.

(The document heretofore marked Respondent's Exhibit 21 for identification was received in evidence.)

Mr. Brooks: I request leave to withdraw this and to make photostatic copies and to substitute a photostatic copy.

Mr. Hackler: No objection.

Trial Examiner Scharnikow: Permission is granted.

Q. (By Mr. Brooks): Mr. Dreyer, during the period of the strike period did the individuals shown on Respondent's Exhibit 20-A, B and C keep any

(Testimony of Elmer L. Dreyer.)

records or make regular entries in [2504] connection with their work?

A. Most of them did, not all for all shifts that they worked.

Q. What method did you use for those entries?

A. The entries were made in a notebook, small black pocket-size notebook.

Q. Where did they make those entries? What I mean is, did they come into the office and make them, did they keep them *or* their persons, or how did they take care of that?

A. A notebook was kept by the man while he was on duty, and entries were made in it from time to time during the period he was working.

Q. Was one or more notebooks used?

A. Through part of the period two notebooks were used.

Q. Explain how they were used and why you had two?

A. One notebook was in the possession of the man that was on duty working. He was making his notes. The other notebook was in the office where Mr. Jones and myself could examine it from time to time but on no regular schedules. The books alternated, thus the notes are not in any consecutive order in the two books.

Q. Did you examine those books regularly during the period of the strike?

A. I examined them from time to time, but at no regular intervals.

(Testimony of Elmer L. Dreyer.)

Q. Did you as a practice make any mark to indicate you had [2505] seen it?

A. I did not myself, no.

Mr. Brooks: I will request the reporter to mark as Respondent's Exhibit 22 a book written in red on the inside of the cover "Book No. 1."

(Thereupon the document above-referred to was marked Respondent's Exhibit No. 22 for identification.)

Q. (By Mr. Brooks): Mr. Dreyer, I show you a book marked for identification as Respondent's Exhibit No. 22. What is that book?

A. That is one of the two notebooks that I referred to in an answer to a previous question.

Q. Were those entries in this book read by you from time to time, as you said, not on a regular schedule, but read by you from time to time during the strike?

A. They were.

Q. Do you know that Mr. Cody made entries into this book?

A. I do.

Q. Do you know his signature?

A. I do.

Q. I show you a page in this Respondent's Exhibit 22 for identification which is headed, "9-14-48." Do you know whether that is George Cody's signature?

Mr. Hackler: Just one moment, please, Mr. Examiner. May I inquire the purpose of this? [2506]

Mr. Brooks: The document?

Mr. Hackler: The purpose of calling the witness' attention to apparently what is some notation in a

(Testimony of Elmer L. Dreyer.)

book identified but not offered. Apparently, as I say, it is some notation or fact or fiction or something above Cody's signature.

Trial Examiner Scharnikow: Well, I haven't seen it.

Mr. Hackler: I haven't seen it either, but before the witness is interrogated concerning it——

Trial Examiner Scharnikow: Do you want to inspect the entry?

Mr. Hackler: Not only do I want to inspect it, but I would like to know what the purpose of the offer is.

Trial Examiner Scharnikow: It may be apparent to you when you read it, I don't know.

Mr. Brooks: Maybe we could clear it up this way: Maybe no further foundation questions will be needed. Maybe counsel has no objection to this being received in evidence.

Mr. Hackler: You mean, the whole book?

Mr. Brooks: Yes.

Mr. Hackler: I haven't had a chance to read it. Let me read this item here you are asking him about.

Mr. Brooks: Let me further clarify the purpose I have in mind. I offer this for the purpose of indicating that Cody knew at various times during the strike while he was working that certain operations were going on, pumping operations, wells [2507] running and the like. It is in connection with the position taken by the General Counsel that no work was done until about the 28th of September. Further, the position of General Counsel that an agreement

(Testimony of Elmer L. Dreyer.)

was made that no work would be done. This book is offered for that purpose and any entries prior to the day Mr. Cody came to work, of course, are not material and are not offered. Further, I will state with respect to the contents of it, I have had prepared a typewritten copy of the contents of this book, which I will be glad to furnish to counsel.

Mr. Hackler: I take it, the typewritten portions include that which you deem relevant?

Mr. Brooks: It includes the entire book, even that portion which is not deemed relevant. I am only offering that portion beginning from September 13th through the last day that Mr. Cody worked.

Trial Examiner Scharnikow: Cody testified that he made reports on two occasions to the dispatcher.

Mr. Brooks: Orally telephonic reports.

Trial Examiner Scharnikow: Evidence of passage of oil.

Mr. Brooks: He indicated he kept a book.

Trial Examiner Scharnikow: He indicated he kept a book, yes. [2508]

Mr. Hackler: The page you invite the witness' attention to, if I correctly read it, is simply a log of where Cody went that day and what he did. There is no report of any kind other than he went at various times to various operations, that he called in, and checked various places, had a flat tire and fixed it, got some gasoline.

Mr. Brooks: That is true for that day. There are other days that follow which bear out the position that we are taking.

(Testimony of Elmer L. Dreyer.)

Mr. Hackler: I have no question, of course, as to the authenticity of the notations, that is, that Cody made them and that it is his signature on them. I have no question this is the book that Cody referred to as a log, I think he called it in his testimony here.

Might I suggest, Mr. Examiner, in view of the fact that there are a number of items that counsel presumably wants to invite attention to, that if there is made available to me the typewritten copy, we might go through it and save time.

Trial Examiner Scharnikow: Have you in mind any specific portions of this book?

Mr. Brooks: Yes.

Trial Examiner Scharnikow: That you want to rely on?

Mr. Brooks: Oh, yes. I can refer to those right now.

Trial Examiner Scharnikow: Well, suppose for the purpose of identification you give a number to your typewritten [2509] copy and then possibly on that basis indicate for the record what portions you rely upon, and maybe we can handle it more easily that way.

Mr. Brooks: Suppose I at this time indicate the pages in the book, and we will mark on the book the identifying symbol that I will indicate as we go along.

Mr. Hackler: Perhaps we can simplify it. You are satisfied with the accuracy of the typewritten copy? If you are, it might be easier to indicate the

(Testimony of Elmer L. Dreyer.)

portions on the typewritten copy, and at this time let the typewritten copy be substituted for the original.

Mr. Brooks: Let me ask the witness a question or two about the typewritten copy.

Trial Examiner Scharnikow: Suppose you do that.

Q. (By Mr. Brooks): Mr. Dreyer, you have furnished me with several copies of a typewritten reproduction of book number 1. Is that correct?

A. That is correct.

Q. Is this the typewritten reproduction you have furnished me? A. It is.

Q. Who prepared this, or under whose direction?

A. This was prepared at my office under my direction.

Q. Did you personally proofread this typewritten copy against the book? [2510] A. I did.

Q. What variations are there, if any?

A. In the book there are many abbreviations which would not be readily identified by one who is not familiar with our phraseology, such as the initials "Y.L." standing just for Yorba Linda. Sometimes just the initial "L." indicating the word "Laboratory," and such as "S.F.S.L." which we know to mean Santa Fe Springs Laboratory. In the typewritten copy we have spelled out those abbreviations.

Also, the notes were in many cases without any punctuation whatsoever. In other cases punctuation was very meager. The typewritten copy is punctuated. Where the notes were signed by the man en-

(Testimony of Elmer L. Dreyer.)

tering them, the typewritten copy is indicated by the word "Signed" in parentheses, followed by the typewritten name. In those instances where the notes were not signed, but we were able to very surely identify the person who had made the notes, either by his handwriting or by the sequence in which the notes were in the book, we have indicated the word "Identified" in parentheses, followed by the name of the man that we know entered the notes.

Trial Examiner Scharnikow: Was that done in any case with reference to an entry made by Mr. Cody?

The Witness: I think in every case Mr. Cody signed the notes.

Mr. Hackler: On page 14 I find one such instance, to [2511] help the witness here. On page 14, an item of September 18th, which appears on the typewritten list at page 14, beginning, "Relieved Redding at headquarters. Called the dispatcher," and so forth.

The Witness: That is an entry which was made which we identified by Cody's handwriting, plus the fact that the man that relieved Cody wrote in the book, "Relieved Cody at 8:00 a.m."

Mr. Brooks: You will notice the next entry.

Trial Examiner Scharnikow: My suggestion is that you give this typewritten copy another exhibit number and then determine eventually which of the two you want admitted, or if you want both admitted, of course, you may offer to do that.

Mr. Hackler: Perhaps, with reference to Mr.

(Testimony of Elmer L. Dreyer.)

Cody, Mr. Cody is here, and we can clear it up and identify his handwriting and make a full and complete substitution. I presume you want this original document back eventually?

Trial Examiner Scharnikow: I think they should have separate exhibit numbers, because some question may come up later in the hearing as to what the original said, for the purposes of comparison.

Mr. Brooks: What I would like to do is indicate the pages in the book which we believe are material.

Trial Examiner Scharnikow: Does the copy have indication of the book paging of the substance?

Mr. Brooks: The book pages are not numbered. They are dated only.

Mr. Hackler: However, there is a typewritten one that presumably is consecutive, the same as the book to which it refers.

Mr. Brooks: That is correct.

Mr. Hackler: For example, I am looking at September 18th on the typewritten copy, page 14 of the typewritten copy, which presumably we could find by going to that date as it appears chronologically in book number 1.

Mr. Brooks: That is correct.

Mr. Hackler: May I suggest that, as you said, the typewritten copies be identified, and in offering or using them in the course of the hearing, that any offering or using be subject to comparison with the original if a question is raised?

Trial Examiner Scharnikow: I think that should be done.

(Testimony of Elmer L. Dreyer.)

Mr. Brooks: Will the reporter mark as Respondent's Exhibit No. 23 for identification 38 typewritten pages entitled "Book No. 1."

(Thereupon the document above referred to was marked Respondent's Exhibit No. 23 for identification.)

Mr. Brooks: Mr. Examiner, I think it would be appropriate maybe to work it this way: I will indicate now on the typewritten copy, which is marked as Respondent's Exhibit No. 23 [2513] for identification, the portions which we wish to offer and consider material. We will keep available the book itself for purposes of check by Mr. Hackler, Mr. Cody, or anyone else. I would like to indicate the portions that we consider material, because it goes beyond the entries made by Mr. Cody himself, because the testimony is that Mr. Cody had the book, thus he would have available for reading entries made during the same period of time by other people. So if I might at this time indicate the portions and we will refer by page number to Respondent's Exhibit No. 23 for identification, a copy of which counsel now has, and if it is agreeable, I will furnish at this time a copy for the Trial Examiner.

Trial Examiner Scharnikow: You are offering portions of Respondent's Exhibit No. 23?

Mr. Brooks: Yes. At page 3, the entry of J. R. Letson, as identified, not signed.

Trial Examiner Scharnikow: That is the entire entry for September 5th?

(Testimony of Elmer L. Dreyer.)

Mr. Brooks: Yes, I have reference to the latter portion of it.

Mr. Hackler: That is the September 5th entry above Letson's identified signature?

Mr. Brooks: Correct.

Mr. Hackler: And with reference to that portion, it is what? [2514]

Mr. Brooks: "Drove to Signal Hill via headquarters. Inspected Laboratory and station; all O.K. Gauged and took temperature of Tank 5532."

Mr. Hackler: Do you want to discuss these as we go along with reference to your offer of them, of the separate items?

Trial Examiner Scharnikow: Suppose we get them all identified and then we can talk about them piecemeal, if you want.

Mr. Brooks: The next one is page 5, September 6th, signed "Rogers." Near the middle portion of the page, the September 6th entry, over Rogers' signature, "Yarnell wells still pumping. Richfield-Consolidated and Krug wells still pumping."

Further on page 5, the September 6th entry, particularly the sixth line from the bottom, "Krug and Yarnell wells still pumping."

Page 8, the September 9th entry, particularly near the middle of the last half of that page: "Krug Lease shipping pump running." Then the two succeeding lines after that one.

Page 9, at the top of the page, which is a continuation of the same September 9th entry, the portion beginning with "Removed seals from Royalty

(Testimony of Elmer L. Dreyer.)

Service Company tanks for Standard Oil." That is the first line at the top of page 9.

The next sentence: "Closed 6-inch gate on Royalty Service line." [2515]

Page 11, the September 14th entry of George Cody, there is no indication there of the kind of work I have been referring to being performed, but it is in order to indicate George Cody had possession of the book on that day.

Mr. Hackler: What is the item there?

Mr. Brooks: No particular item. Still on page 11.

Mr. Hackler: In connection with that may I inquire, is there some other item on that day that, by his possession of the book, he is deemed to have notice of?

Mr. Brooks: The purpose is to show that he had notice of all which had gone on previous to that, because all entries had been made in the book.

Trial Examiner Scharnikow: There is no statement in the entry of September 14th by Cody that you are calling attention to?

Mr. Brooks: That is correct. However, on the same page 11 of the typewritten copy, Exhibit 23, there is toward the bottom in the September 14th entry of Rogers, "Delivered run tickets to producing department."

The entry in the last third of page 12 of George Cody with no specific reference.

Mr. Hackler: Is that to impute to him knowledge of something before or that he merely did the things recited in the entry?

(Testimony of Elmer L. Dreyer.)

Mr. Brooks: To impute knowledge that just what had been [2516] entered previously had gone on.

Page 13, the entry of September 15th in the top half of the page, particularly reference is after 10:45 a.m.: "Wells all pumping. Krug pump pumping."

Page 14, the entry of George Cody under date of September 18th, particular reference near the middle of the entry, "All the leases in Santa Fe Springs are pumping again." [2517]

Also after that sentence appears this, with two intervening entries: "All of these leases are running," referring to Montebello.

Further down two lines appears, "Harlow-Kent, Bauman and Campbell leases are running again."

Entry on page 15 of George Cody under date of September 19th, near the end of the entry, "O'Neil wells pumping."

The entry on page 17 of George Cody for September 20th, no particular reference; the entry for September 21st of George Cody on page 17—

Mr. Hackler: You offered the September 20th of Cody's?

Mr. Brooks: Yes.

Trial Examiner Scharnikow: Only on the signature again?

Mr. Brooks: And the matter that he indicated that he had the book.

The references on September 21st, about the middle of the second paragraph, reading, "Tank 4298, Columbia Lease—no numbered seal. Suction

(Testimony of Elmer L. Dreyer.)

closed. Called dispatcher at 1:30 p.m. Stopped and talked to Letson by Elliot lease; as we were talking someone came up and gauged Elliot tank. I asked if he knew who it was and he said 'A SoCal man, I guess.' Left for Yorba Linda. Krug pump running. Station O.K. Tank 2013 open to receive."

Page 18, the entry of September 22, 1948, opposite the time entry 0140 and 0200, "Talked with pumper who says that [2518] several wells were shut down yesterday."

Mr. Hackler: That is an entry of Mr. Redding, I take it?

Mr. Brooks: That is right.

Off the record a minute, Mr. Examiner.

Trial Examiner Scharnikow: Off the record.

(Discussion off the record.)

Mr. Brooks: Page 19, the entry of George Cody, dated September 22, 1948, no particular reference.

Page 19, the entry of George Cody, as identified, not signed, September 23rd, a reference about the middle of the paragraph: "Three leases running."

Page 20, the third line from the top, which is a part of the entry of September 23rd, which begins on page 19. The reference is: "6:30 p.m., Los Alamitos No. 1. Started and ran motors in trucks and cleaned out desk."

I further offer the entry of September 24th, beginning near the bottom of page 21 and ending near the middle of page 22, signed by George Cody, with no particular reference.

I do not offer any entries made after that.

(Testimony of Elmer L. Dreyer.)

Mr. Hackler: After——

Mr. Brooks: After the entry of George Cody on September 24th. This particular book was not in his possession at any time after that.

Mr. Hackler: Can we go through the other book?

Mr. Brooks: Yes, I will do that right now.

I request the reporter to mark the document entitled "Book No. 2," containing 19 typewritten pages as No. 24.

(Thereupon the document above-referred to was marked Respondent's Exhibit No. 24 for identification.)

Trial Examiner Scharnikow: Do you have the original of that book, too?

Mr. Brooks: Yes, I do. Would you like to have that marked for reference?

Trial Examiner Scharnikow: Yes, I think so.

Mr. Brooks: Very well. Mark the typewritten copy as Respondent's Exhibit No. 24 for identification and a black notebook as Respondent's Exhibit No. 25.

(Thereupon the document above-referred to was marked Respondent's Exhibit No. 25 for identification.)

Q. (By Mr. Brooks): I show you Respondent's Exhibit No. 24 for identification and 25 for identification, and ask you to explain to us what those two exhibits are.

A. The Exhibit No. 25 is one of the two black

(Testimony of Elmer L. Dreyer.)

notebooks referred to as being used during the strike period in answer to one of your previous questions.

Exhibit No. 24 is a typewritten copy of this Notebook No. 2, which was prepared in the same manner as was the typewritten copy in the case of Book No. 1.

Q. Do the same variations occur in the typewritten copy of [2520] Book No. 2, which is 25, as occurred in the typewritten copy of Book No. 1?

A. They do.

Mr. Brooks: Would you like to dispose of Respondent's Exhibit No. 24 at the present time, Mr. Examiner?

Trial Examiner Scharnikow: Suppose you specify the portions of No. 24 which you offer, and then we will consider an offer of 23 and 24 at one and the same time.

Mr. Brooks: Referring to the typewritten copy which is marked as Respondent's Exhibit No. 24, I offer, referring to page 1, the September 8th entry, particularly referring to the paragraph headed "5:10" to "6:00 o'clock p.m.," the last sentence: "Found Texas Company wells pumping."

Mr. Hackler: Inasmuch as that is Hight's entry, I take it that is to impute knowledge to Cody of that entry?

Mr. Brooks: That is correct, the same applies to the 8:00 o'clock p.m. entry: "Yarnell wells pumping."

For the same purpose I offer the last statement

(Testimony of Elmer L. Dreyer.)

on page 1, under the September 9th entry: "Pearce No. 1 pumping. Tank O.K."

I offer the entry of September 11th on page 4, signed by Redding, opposite the time 0600, "Pearce No. 1 still pumping."

I offer the entry of September 12th on page 5, at the bottom of the page, particularly referring to the last sentence [2521] in the 9:00 a.m. entry: "Pearce, Elliot, Barker, Brown, Towers and Smythe wells still pumping."

Further, with reference to the last two sentences of the 11:00 a.m. entry, beginning with "Bradford" and ending with that page.

I offer the entry of September 13th, beginning at the last third of page 6, signed by George Cody. There is no particular reference to that entry, the contents of that entry.

Mr. Hackler: I take it that is——

Mr. Brooks: To indicate that George Cody had the book in his possession at that time, and that the previous entries already referred to were in the book at that time.

I offer also on the September 15th entry, in that entry on page 7, after the time 0615, "Pearce still pumping."

I offer on page 9 the entry opposite 2:30 p.m., the portion stating, "Most wells pumping," which is under the September 16 entry continued from the preceding page, and signed by Rogers.

I offer on page 10 the entry of September 17th by Hight, referring to the last sentence after the

(Testimony of Elmer L. Dreyer.)

1:30 a.m. entry, "Wells operating on Volmer-Meyers, Smythe, Towers, and Brown leases."

Further, referring to the second sentence opposite the 2:45 a.m. entry, "Wells operating on Richfield-Consolidated, Krug, Yarnell. Tank 10008 is nearly full (oil within three [2522] foot of top). 2009 about half full and open to field. 2008 empty."

I offer on the same page in the September 20th entry, about the middle of the first paragraph, "Tanks 1174 and 1175, Matern No. 3 lease, suction gates closed but no numbered seals." That is in the September 20th entry, same page.

"Also Tank 1146, Matern No. 2 and 1166 Baldwin. Pumps, discharge and suction both closed."

Next to the last paragraph of the same entry, the same page, in the second line of that paragraph, "Yarnell pump running. Seals broke on Tanks 1217 and 1228. Suction gate open on 1217. Close on Tank 1228. Stream going into Tank 10006."

I offer beginning with the last line on page 10 in the same entry, all of that last line and continuing on page 11, "open on Tank 1223."

I refer to the next paragraph on page 11 in the same entry, the entire paragraph. That is signed by George Cody.

Trial Examiner Scharnikow: This is in the 20th entry—no, it must be—yes, in the September 20th and ending at the top of page 11.

Mr. Brooks: September 20th entry which entry begins below the first half of page 10 and carries through almost half of page 11. That is all one en-

(Testimony of Elmer L. Dreyer.)

try. It will be noted at the top of page 11 it is, "September 20, 1948 (Cont'd)." [2523]

I offer the entry on page 11 after the September 20th entry opposite the time 0630, "Pearce No. 1 pumping."

I offer the entry beginning at the bottom of page 12 dated September 21st, which continues to page 13 and signed by George Cody.

Mr. Hackler: The whole day?

Mr. Brooks: I offer the entire entry for the purpose previously stated of indicating that George Cody had the book on that day and had knowledge of the entries in the book made previously, and also call attention to the statement, "Found leak on Voix lease in Santa Fe Springs," and what he did about it.

Mr. Hackler: Is that this——

Mr. Brooks: Top of page 13, which is a continuation of the September 21st entry of George Cody.

I offer the entry of September 22nd, signed by George Cody, appearing on Page 13, in its entirety for all the reasons previously stated, and I make particular reference to the following, beginning about the middle of the paragraph, "Seal broken on tank 4300." Another statement following that shortly, "Wells running."

Another statement on the next line, "Most of wells are shut down," referring to Yorba Linda.

Dropping down three lines the statement, "New Bradford well still running. Talked to Hopkins, and he said they would run them until tanks were full."

Dropping down two lines, the statement, "Some

(Testimony of Elmer L. Dreyer.)

wells are running in Montebello." There is one further reference two lines above the last referred to statement that I would like to call attention to, and that is, "2013 open to field."

I offer the entry of September 23rd, Page 14, signed by Redding, with particular reference to that portion after the time 0550, "Pearce No. 1 pumping."

I offer the entry of George Cody at Page 15, which begins at the top and ends with "Signed, George Cody," with no particular reference and for the purposes previously stated.

I offer nothing in the documents beyond that entry of George Cody dated September 23rd. The book was not in his possession after that time.

Trial Examiner Scharnikow: I have your offer, then—— [2525]

Mr. Brooks: I offer both Respondent's Exhibits——

Trial Examiner Scharnikow: ——23 and 24.

Mr. Brooks: Is that the typewritten copies? I want to offer the typewritten copies, with the understanding that the books will be available at any time during the trial for checking purposes.

Trial Examiner Scharnikow: They are identified and they should be available, of course.

Mr. Brooks: That is right.

Mr. Hackler: Are the documents offered in their entirety or the indicated portions?

Mr. Brooks: I will only offer the portions which I have indicated to this extent: I do not offer any portion after the reference I made on each one, end-

(Testimony of Elmer L. Dreyer.)

ing with the last entry of George Cody. I am offering the documents for the limited purpose of indicating that George Cody had knowledge of certain operations that are indicated as going on in the field, as of the dates up until the time he left. Now, when I limit the marked portions or the referred to portions, that is the material part, but it may be that some sentence preceding or some sentence following would be explanatory.

Trial Examiner Scharnikow: Necessary context.

Mr. Brooks: Right.

Trial Examiner Scharnikow: May I ask you a question, Mr. Hackler? [2526]

Mr. Hackler: Yes.

Trial Examiner Scharnikow: Have you any objections to the entries signed by Cody, or identified as having been written by Cody, where they are having specific references to the subject matter of Cody's writing?

Mr. Hackler: Do I understand that all of these are offered as knowledge of operations on the part of Cody? I so understood the offer.

Mr. Brooks: That is correct, and that operations were proceeding and that he knew about it.

Mr. Hackler: There is no question in my mind or in anybody's that Cody had knowledge of the matters that he entered in the book. My objection goes to the fact that it is not impeaching of Cody in any respect. He so testified here. He had knowledge and made entries in the book. Now, other than this being the best evidence of the entries he made

(Testimony of Elmer L. Dreyer.)

in connection with his testimony, if this is offered as impeaching, for the purpose of impeaching Cody, then I will object to it.

Trial Examiner Scharnikow: Well, I have no difficulty so far as Cody's entries were substances referred to in Cody's testimony, as to the admissibility of the exhibits.

Mr. Hackler: I had this in mind, Mr. Examiner, something that is received for impeaching purposes is limited in its use by the Trial Examiner and the Board so far as findings under the rules of evidence, so that purpose, namely, the [2527] truth or falsity of the testimony of the witness sought to be impeached, and may not be the basis of affirmative findings.

Mr. Brooks: It is not offered for the limited purpose——

Trial Examiner Scharnikow: Well, of course, Cody testified there were only two occasions where he had evidence of flow, as I remember it.

Mr. Brooks: That is my recollection.

Trial Examiner Scharnikow: I may be wrong on it, but that is my recollection of it, and that he made reports in both cases; one case to the dispatcher alone and one case, I think, to Letson.

Mr. Hackler: Mr. Examiner, that is the difficulty of the exhibit, even as to the Cody entries. The great majority of the entries by Cody refer to wells pumping, a producing operation, as this witness explained. For example, a number of those——

(Testimony of Elmer L. Dreyer.)

Trial Examiner Scharnikow: It may have been going into storage.

Mr. Hackler: May have been? It was. All that was that the man rode by and saw a rocking beam and reported it, so that I certainly don't want—let me object in this fashion: I object to the reception of any of the matters not signed Cody for obvious reasons, so-called imputed knowledge of those items is too speculative and remote to be of any [2528] value here, and for the further reason it has no bearing, no reasonable relationship to Cody's testimony.

With respect to the items that bear Cody's signature, in so far as those items refer to wells pumping, matters that are not pipe line operations, the number of them on their face indicate they are not pipe line operations, such as the ones: "Wells pumping," and I have other notes here.

I object to it being received as not relevant to any issue in the case, as not bearing on anything Cody testified to and having no probative value, the fact that Cody observed wells producing and so reported to management. He at no place testified that the production operations were at a standstill or that he only on two occasions observed some production going on.

With respect to the items that Cody reported himself, they were pipe line operations. Do I understand they are offered as affirmative evidence and not merely as impeaching testimony?

Mr. Brooks: Let me state——

(Testimony of Elmer L. Dreyer.)

Mr. Hackler: Then I will state whether I object or not.

Mr. Brooks: It has been contended and was done so in connection with the Cody case and the entire case that an agreement was made at the beginning of the strike that the company wouldn't do any operations, and that finally, about the end of September, the union revoked its passes because [2529] the company had violated its agreement. Cody testified that he continued to operate and work and draw his money because there were no operations going on, and he wouldn't participate, wasn't participating in any operations. [2530]

Counsel argued that as of the end of September the company changed its policy. That word was used, "policy." That the company decided that it would start operations and it requested Mr. Cody to do something that it had agreed it would not request Cody to do, and that he was therefore relieved of his responsibilities as a supervisory employee, and thus, any refusal to re-employ him was discriminatory within the meaning of the Act.

This shows what was going on and what Cody knew about it insofar as these books indicate.

That is the purpose of offering the information contained in these books.

Trial Examiner Scharnikow: Well, I think I have got enough now.

Mr. Hackler: Of course, I think the record speaks for itself as to our contentions and also as to Mr. Cody's testimony.

(Testimony of Elmer L. Dreyer.)

Trial Examiner Scharnikow: I have gotten your position on this. I am not going to take Respondent's Exhibits 23 and 24 as probative of the substance of any of the statements. I am going to receive in evidence Respondent's Exhibits 23 and 24, all of the indicated references as well as those cases in which the respondent simply pointed out either Cody's signature or identification of an item as having been entered by Cody, as bearing on, first, the knowledge or [2531] possible knowledge of Cody as to production operations, and also as to flow in the pipe line system, and also with reference to the credibility of Cody's testimony as to that knowledge, when he was on the stand.

I take it that so far as the items not signed by nor identified as having been made by Cody are concerned, that the exhibits, upon consideration of all of the items and the testimony of the present witness Dreyer, indicate the possession of the book, either of the books in question, on the dates when the exhibits indicate that Cody made entries, leaving open the question of any possible ultimate inference from the fact of possession as to knowledge by Cody of the other entries not made by him.

That is my ruling.

Mr. Hackler: So far as the entries made by other people besides Cody, the ruling was they were or were not received?

Trial Examiner Scharnikow: They are received. I am receiving all of the identified portions of the two exhibits for the purposes that I have outlined.

(Testimony of Elmer L. Dreyer.)

Mr. Hackler: Including the items made before Cody returned to work?

Trial Examiner Scharnikow: I am not drawing any inference from the fact of demonstrated possession, that Cody had actual knowledge of entries other than those made by him. I am taking it as showing that he had possession, leaving open [2532] to ultimate decision any possible inference as to whether on the basis of that possession he had knowledge.

Mr. Hackler: I take it that the same applies with reference to all of the items received by you, that you are leaving open the inferences to be drawn from all of the entries in the respect which I mentioned as to what is meant by pumping going on or a well operating, or words to that effect.

Trial Examiner Scharnikow: That's right.

Mr. Hackler: Which of course will have to be elucidated by other evidence, presumably.

Trial Examiner Scharnikow: That is right. Of course there are entries in these exhibits which have been referred to and which I am specifically receiving, which indicate that tanks were either full or nearly full.

Now, the record is still open to explanation as to whether or not there were these storage tanks, if I am using the term correctly, or some tanks within the jurisdiction of the pipe line department.

I am also leaving open the question of whether or not Cody, as a pipe line man, what he should have assumed, or what he might have reasonably assumed, the fact that the wells were operating over the

(Testimony of Elmer L. Dreyer.)

period, about which he may be found to have knowledge as to what that meant in connection with the usual pipe line operations in taking the oil from the leases. I don't know. I don't know now. [2533]

Mr. Hackler: That leaves one class of identified items yet undisposed of, it seems to me. Those are items of the type of the one on page 3, for example, of J. R. Letson.

Trial Examiner Scharnikow: Which exhibit?

Mr. Hackler: Of Respondent's Exhibit 23, and if I am not in error, there were at least a few others of the same type, namely, entries by other people than Cody in which they stated that they performed certain work themselves. The one I have in mind right now is the one of Letson of September 5th, in which he says, "I gauged and took the temperatures of," a certain tank. I don't see conceivably how the fact that some of these fellows were willing to do what Cody later refused to do does, under the circumstances mentioned in evidence, have any bearing on Cody's case if everyone went out and did production work before Cody got back from his vacation, or even after he did.

Trial Examiner Scharnikow: I don't intend to go that deeply into the use of the exhibit.

Mr. Hackler: That was the only portion of that day offered. Two weeks before Cody got back from his vacation his boss, Letson, saw fit to gauge and take the temperatures of the tank.

Trial Examiner Scharnikow: So far as that entry on page 3 by Letson, on Respondent's Exhibit

(Testimony of Elmer L. Dreyer.)

23, is concerned, the clear materiality of the admission of that statement is in [2534] connection with the knowledge of Cody, as to the possible knowledge of Cody as to the substance of that statement, and then the secondary question, assuming that he did know about that statement in the book, what the significance of that statement was to him. I am not going to try to go into that sort of thing.

Mr. Hackler: But those sorts of statements are received, the fact that from time to time the entries would seem to indicate that others than Cody performed work of gauging and taking temperatures?

Trial Examiner Scharnikow: They are received.

Mr. Hackler: For whatever it is worth.

Trial Examiner Scharnikow: That is right.

(The documents heretofore marked Respondent's Exhibits Nos. 23 and 24 for identification were received in evidence.) [2535]

RESPONDENT'S EXHIBIT No. 23

* * * * *

September 5, 1948

Drove to Signal Hill via Headquarters. Inspected Laboratory and station; all O.K. Gauged and took temperature of Tank 5532. (One picket).

(Identified) J. R. Letson

* * * * *

September 6, 1948

Arrived Yorba Linda 11:00 a.m. No pickets. Everything O.K. Yarnell wells still pumping, Rich-

Respondent's Exhibit No. 23—(Continued)
field-Consolidated and Krug wells still pumping.

(Signed) Rogers

September 6, 1948

6:30 p.m. Arrived Yorba Linda Dehydrator via Santa Ana and Orange. Krug and Yarnell wells still pumping.

(Signed) R. Hight

* * * * *

September 9, 1948

Krug Lease shipping pump running.

Bradford Lease shipping pump running.

Producing wells producing.

Drove to Terminal Island. Removed seals from Royalty Service Company tanks for Standard Oil. Closed 6-inch gate on Royalty Service line. Drove to Los Alamitos Headquarters. Was relieved by Redding at 12 midnight.

(Signed) J. R. Letson

* * * * *

September 14, 1948

12:00 m. Relieved Huso at Headquarters.

12:15 a.m. Checked locks on all gates at Los Alamitos No. 2. Called Dispatcher. Drove to Yorba Linda. Checked all gates to see that locks were on. Checked pump at Buena Park. Had flat tire fixed in Buena Park at C. H. Owen & Sons Station. Returned to Los Alamitos No. 2. Called Dispatcher at 3:00 a.m.

Drove to Huntington Beach. Laboratory, booster pump O.K. Back to Los Alamitos No. 2. Circled

Respondent's Exhibit No. 23—(Continued)
farm. Went to Norwalk Station. Drove around to all gates. Then to Santa Fe Springs Laboratory, back to Los Alamitos No. 2, then to Signal Hill Laboratory and Station. Everything O.K.

Called Dispatcher.

Filled car with gas at Tank 118027.

Relieved by Ray Rogers.

(Signed) Geo. Cody

September 14, 1948

11:00 a.m. L. A. Works via 10-inch line. Checked concrete patch job in alley off Pico in Long Beach. Job is completed. Delivered run tickets to Producing Department. Signal Hill Station; several pickets.

(Signed) R. Rogers

* * * * *

September 15, 1948

12:00 a.m. Relieved Huso at Headquarters. Drove around Los Alamitos No. 2 and checked all gates. Called Dispatcher.

Checked booster pump and tank at Huntington Beach; also Gaugers' Laboratory.

Drove around Los Alamitos No. 2, then to Yorba Linda Station. Checked all gates. Back to Los Alamitos No. 2. Called Dispatcher 2:50 a.m.

Went to Norwalk Tank Farm. Checked all gates. Santa Fe Springs Gaugers' Laboratory O.K. Rode line to Montebello. Everything O.K. Back to Los Alamitos No. 2 via Santa Fe Springs and Norwalk. Called Dispatcher.

Filled car with gas at Tank 118027.

Went to Signal Hill. Checked Laboratory, Signal

Respondent's Exhibit No. 23—(Continued)

Hill Station; also checked lease pumps. Everything seems O.K.

Relieved by Ray Rogers.

(Signed) Geo. Cody

September 15, 1948

10:45 a.m. Yorba Linda Station, O.K. Wells all pumping. Krug pump pumping.

(Identified) R. Rogers

* * * * *

September 18, 1948

Relieved Redding at Headquarters. Called Dispatcher 12:30 a.m.

Drove to Huntington Beach via pipe line. Checked booster and Tank 8010; also laboratory. Circled Los Alamitos No. 2 and checked all gates. Went to Yorba Linda via lines. Checked all gates and lease pumps. Returned to Los Alamitos No. 2. Drove to Norwalk. Checked gate. On to Santa Fe Springs Laboratory. All the leases in Santa Fe Springs are pumping again. There were two pickets at Production Headquarters. On to Montebello. All of these leases are running. Returned to Los Alamitos No. 2. Drove to Signal Hill. Checked Station gate and Laboratory doors. Harlow-Kent, Bauman and Campbell leases are running again. Two pickets at Plant 5 and two pickets at Producing Headquarters.

Called Dispatcher at 6:30 a.m. Returned to Los Alamitos No. 2. Filled up with gas at Los Alamitos No. 1.

Relieved by Letson.

(Identified) Geo. Cody

Respondent's Exhibit No. 23—(Continued)

* * * * *

September 19, 1948

Relieved Redding at Headquarters. Called Dispatcher 12:50 a.m. Drove to Huntington Beach via lines. Booster, Tank 8010 and Laboratory O.K. Back to Los Alamitos No. 2. Then to Yorba Linda via line. All O.K. Back to Los Alamitos. Called Dispatcher at 3:45 a.m.

Norwalk via lines. Santa Fe Springs Laboratory O.K. Two pickets at the Producing Headquarters. Everything O.K. at Montebello. Back to Los Alamitos, then to Signal Hill Station and Laboratory. O.K. Two pickets at Plant 5. Two pickets at Producing Headquarters. O'Neil wells pumping. Back to Los Alamitos No. 2. Called Dispatcher at 6:30 a.m.

Filled car with gas at Tank 118019.

No pickets on Pipe Line property.

Relieved by Letson.

(Signed) Geo. Cody

* * * * *

September 20, 1948

Relieved Huso at Headquarters at 8:00 a.m. No pickets. Circled Los Alamitos No. 2. Two pickets. Called Dispatcher 8:20 a.m. Drove to Signal Hill. No pickets at Laboratory or Station. Ditching machine working on 28th Street. On to L. A. Works to pick up checks for Rogers and myself.

(Noted—F. A. J.)

(Identified) Geo. Cody

September 21, 1948

Left L. A. Works at 11:00 a.m. Went to Signal

Respondent's Exhibit No. 23—(Continued)

Hill. Ditching machine nearly to Gundry. Line laid in ditch up to the east side of station and they started backfilling. All lines seem O.K. No pickets. Called Dispatcher at 11:50 a.m.

No pickets at Los Alamitos No. 1. Circled Los Alamitos No. 2. Two pickets there. Went to Huntington Beach via lines. Booster and Tank 8010 O.K. Tank 4298, Columbia Lease—no numbered seal. Suction closed. Called Dispatcher at 1:30 p.m. Stopped and talked to Letson by Elliot Lease; as we were talking someone came up and gauged Elliot tank. I asked if he knew who it was and he said "A SoCal man. I guess". Left for Yorba Linda. Krug pump running. Station O.K. Tank 2013 open to receive. Called Dispatcher 2:40 p.m. Followed lines back to Los Alamitos No. 2. No pickets.

Filled car with gas at Tank 118027. Went to Signal Hill via lines. No pickets at Los Alamitos No. 1. Well down at Signal Hill.

Relieved by Rogers.

(Signed) Geo. Cody

* * * * *

September 22, 1948

0140 a.m. O.K. Yorba Linda Station O.K. Producing quiet. Talked with pumper who says that several wells were shut down yesterday a.m.

0200 a.m. Rode lines back to Los Alamitos No. 2.

(Signed) J. L. Redding

September 22, 1948

Relieved Redding at 8:00 a.m. No pickets, but Joe

Respondent's Exhibit No. 23—(Continued)

Zeman came up while we were changing shift. One picket at Los Alamitos No. 2. Huso on days at Station. Called Dispatcher at 8:20 a.m. Picket had left Los Alamitos No. 2. No one at Los Alamitos No. 1 as I went by on way to Signal Hill. Pickets and foreman talking at Plant 5-B. No pickets at station or laboratory. Ditching machine is just east of Gundry Avenue. On in to L. A. Works via line. Exchanged book with Jones.

(Signed) Geo. Cody

September 23, 1948

Filled up with gas at L. A. Works. Drove to Huntington Beach via lines. Went to all leases. Didn't see any pickets anywhere. Booster, Tank 8010 and Laboratory O.K. Called Dispatcher at 10:10 a.m. Two blocks east of Stanton on the south side of Orangethorpe the S. E. Con. Co. is tying in a 2-inch gas line—our line not exposed. On to Yorba Linda. Rode Richfield-Consolidated lines; also Krug line. Three leases running. No pickets. Station O.K. Called Dispatcher at 11:30 a.m. Went to Montebello. Everything there about the same. Two pickets at Plant No. 14. Rode lines back to Santa Fe Springs. Checked all lease pumps. Found everything the same here. Two pickets in front of Producing Headquarters. Called Dispatcher at 12:40 p.m. On to Norwalk Tank Farm. Drove through farm and around to back gate. On to Los Alamitos No. 2. Called Dispatcher at 2:30 p.m. No pickets. On to Signal Hill via lines.

(Identified) Geo. Cody

Respondent's Exhibit No. 23—(Continued)
September 23, 1948—(Cont'd)

6:30 p.m. Los Alamitos No. 1. Started and ran
motors in trucks and cleaned out desk.

(Identified) R. Rogers

* * * * *

September 24, 1948

Relieved Huso at 4:00 p.m. Circled Los Alamitos
No. 2. Called the Dispatcher at 4:30 p.m. Huntington
Beach Booster, Tank 8010 and Laboratory O.K. Los
Alamitos No. 2 O.K. Yorba Linda Station and tanks
O.K. Called Dispatcher at 6:30 p.m.

Buena Park pump O.K.

Circled Norwalk Tank Farm. Santa Fe Springs
Laboratory O.K.

Two pickets in front of Producing Department
Headquarters.

Whittier Hills lines O.K.

Montebello seems O.K.

No pickets at Plant 14.

Rode lines back to Los Alamitos No. 2.

Called Dispatcher 10:00 p.m.

Circled Los Alamitos No. 2. Los Alamitos No. 1
O.K.

Two pickets at Plant 5.

Two pickets at Producing Headquarters.

Signal Hill Station and Laboratory O. K.

No pickets at any of our places.

Called Dispatcher at 11:45 p.m.

Relieved by Huso.

(Signed) Geo. Cody

* * * * *

RESPONDENT'S EXHIBIT No. 24

September 8, 1948

5:10 to 6:00 p.m. At Huntington Beach Station. Pump O.K. Bottom L on Tank 8010 is badly rusted on southwest side; should be cleaned and repainted. Checked amount of available salvageable scrap steel and pipe. Rode line to Brown Lease. Found Texas Company wells pumping.

8:00 p.m. Yorba Linda O.K. Yarnell wells pumping. Union Oil Company Gas Plant west of Yarnell Lease in operation.

(Signed) R. Hight

September 9, 1948

0430 Huntington Beach Gaugers' Laboratory okay. Production okay. Pearce No. 1 pumping, tank okay.

(Signed) J. L. Redding

* * * * *

September 11, 1948

0600 Huntington Beach Producing O.K. Pearce No. 1 still pumping. Gaugers' station O.K.

(Signed) J. L. Redding

* * * * *

Sunday, September 12, 1948

8:00 a.m. Relieved Huso, Los Alamitos No. 1. No pickets.

8:10 a.m. Ten gallons gasoline in car from Tank 027, Los Alamitos No. 2. No pickets.

9:00 a.m. Rode line to Huntington Beach. Boosters and Tank 8010 O.K. Rode field lines. Pearce, Elliot, Barker, Brown, Towers and Smyth wells still pumping.

Respondent's Exhibit No. 24—(Continued)

September 12, 1948—(Cont'd)

11:00 a.m. Yorba Linda via line. Bradford, Yarnell and Krug wells pumping. Pumping oil from Krug pump to 10,000 barrel tank at station.

(Identified) R. Rogers

* * * * *

September 13, 1948

12 Md. Relieved Geo. Munsell.

12:15 a.m. Drove around Los Alamitos No. 2 and checked locks on gate.

12:45 a.m. Checked gate at Norwalk. All O.K. Drove to Santa Fe Springs Laboratory and around leases and called in at 1:30 a.m. Back to Los Alamitos No. 2 via Norwalk. Checked doors on Laboratory at Signal Hill; also gates at Station. All were locked and O.K. Called Dispatcher at 3:00 a.m. Back to Los Alamitos No. 2. Drove around Tank Farm; left for Huntington Beach. Checked Laboratory, booster and Tank 8010. Back to Los Alamitos No. 2. Called in at 4:45 a.m.

Drove to Yorba Linda. Checked gates to see that they were locked. Back to Los Alamitos No. 2. Drove around Tank Farm; then to Headquarters. Called in 7:00 a.m. Filled up with gas. Relieved by Rogers at 8:00 a.m.

Fog cleared away at about daylight.

(Signed) Geo. Cody

* * * * *

September 15, 1948

0615 Huntington Beach Gaugers' Station, Producing and Pearce No. 1 O.K. Pearce still pumping.

(Signed) J. L. Redding * * * * *

Respondent's Exhibit No. 24—(Continued)

September 16, 1948

2:30 p.m. Santa Fe Springs; covered lines and leases. Most wells pumping. General Petroleum not working at Spring and Florence. Holes still open and barricaded. Leak on Florence west of Norwalk Blvd. has been repaired by General Petroleum. Holes still open and barricaded.

(Signed) R. Rogers.

* * * * *

September 17, 1948

1:30 a.m. Completed inspection of Smythe, Towers, Brown and Barker pumps and Huntington Beach Laboratory; all O.K. Wells operating on Volmer-Meyers, Smythe, Towers and Brown Leases.

2:45 a.m. Arrived Yorba Linda Station via Goldenwest, Hanson and Orangethorpe. Wells operating on Richfield - Consolidated, Krug, Yarnell. Tank 10008 is nearly full (oil within 3-ft. of top). 2009 about half full and open to field. 2008 empty. Station O.K. Called Dispatcher.

(Signed) R. Hight

September 20, 1948

Changed books at L. A. Works. Gave Ray Rogers his check at home. No pickets at Signal Hill. Los Alamitos No. 1 O.K. No pickets. Two pickets at Los Alamitos No. 2. Norwalk O.K. No pickets. Santa Fe Springs Laboratory O.K. Tanks 1174 and 1175, Matern No. 3 lease, suction gates closed but no numbered seals. Also Tank 1146, Matern No. 2 and 1166 Baldwin. Pumps, discharge and suction both closed. Two pickets at Producing Headquarters. Called Dispatcher at 11:15 a.m.

Respondent's Exhibit No. 24—(Continued)

Rode lines to Montebello. Everything O.K. Two pickets at Plant No. 14.

Went to Yorba Linda via pipe line. Saw Letson and Hopkins at Yarnell Lease. Yarnell pump running. Seals broke on Tanks 1217 and 1228. Suction gate open on 1217. Closed on Tank 1228. Stream going into Tank 10006. Called Dispatcher at 1:20 p.m.

No seals on Krug Tanks 1331, 1233, 1235 and 1236. Gate open on Tank 1233. Producing Department gang laying 6-inch waste water line.

No seal on suction of Tank 1219, Richfield-Consolidated Lease. All seals broke on Bradford Lease, Tanks 1223, 1224, 1227 and 1228 and gates are closed.

Left for Huntington Beach via lines. Buena Park No. 4 O.K. Well still down. Laboratory, booster pumps and Tank 8010 O.K. Called Dispatcher at 2:30 p.m. Drove back to Los Alamitos No. 2 via lines. Called Dispatcher. He reported a leak on the west side of Bloomfield $\frac{1}{4}$ mile north of Union Oil Gas Plant in Santa Fe Springs. This was at 3:15. Leak checked. It is on the east side of Bloomfield and the north side of Flagon Street right on the curve in front of the Union Oil Company Gas Plant. Union Oil gang is digging it out and said they would clamp it. It is wet oil.

Filled car with gas at Tank 118027. No pickets.

Relieved by Redding.

(Signed) Geo. Cody

September 20, 1948

0630 Production quiet. No pickets. Pearce No.

Respondent's Exhibit No. 24—(Continued)
1 pumping. Riding lines back to Los Alamitos No. 2.
Drove around inside farm. All O.K.

(Identified) J. L. Redding

* * * * *

September 21, 1948

Relieved Huso at Headquarters. Two pickets on duty. Circled Los Alamitos No. 2. Two pickets. Called Dispatcher at 8:20 a.m. As I left Los Alamitos No. 2 two more pickets showed up. Drove to Santa Fe Springs via Norwalk Tank Farm. No pickets. Found leak on Foix Lease in Santa Fe Springs. Reported it to Carter, Producing Foreman, and he said "let it leak". There were four guards at his house when I drove up. I asked them where they were from and they said "a concern in Los Angeles". Large picket line forming around Producing Department Field Office. Several pickets at L. A. Works. Changed book with Jones 10:00 a.m.

(Signed) Geo. Cody

September 22, 1948

Left L. A. Works at 9:15 a.m. Had car serviced at Jay's Station. Back to Signal Hill. Two pickets in front of Producing Headquarters. Two pickets at 5-B. Called Dispatcher. Drove to Los Alamitos No. 2 via lines. All wells shut down on Signal Hill. No pickets at Los Alamitos No. 2. Three at Los Alamitos No. 2. One, Frank Whitten, asked if he could take his vacation. I told him I would find out. Huntington Beach via lines, booster Tank 8010 and Laboratory. Seal broken on Tank 4300. No pickets. Wells all running. Called Dispatcher at 11:40 a.m. Left for Yorba

Respondent's Exhibit No. 24—(Continued)

Linda. Most of the wells are shut down. Talked to Pumper and he said about eight or nine pickets were here this morning and the Producing Department gave orders to shut the well down. Went around field. New Bradford well still running. Talked to Hopkins and he said they would run them until tanks were full. Station locked O.K.—2013 open to field. All tanks are full, the Producing Pumper told me. Called Dispatcher at 12:30 and left for Montebello and Whittier Hills. Some wells are running in Montebello. Two pickets at Plant 14. Rode lines back to Santa Fe Springs. All leases shut down. One picket at Plant 9. Leak has not been fixed at Foix, but leak has stopped, due to shutting down wells.

Called Dispatcher at 2:00 p.m. Went to Norwalk. O.K. On to Los Alamitos No. 2. No pickets at Los Alamitos No. 1 or No. 2. On to Signal Hill. Bush Oil Co. well blowing water to top of rig. Fireman and Police are there, about 1/2 block southwest of Ellis Lease.

Called Dispatcher 3:45 p.m.

Relieved by Rogers.

(Signed) Geo. Cody

* * * * *

September 23, 1948

0550 Station O.K. Called Dispatcher. Production quiet. Pearce No. 1 pumping. Gaugers' Laboratory locked. Stopped to eat.

(Signed) J. L. Redding

Relieved Redding.

No pickets at Los Alamitos No. 1 or Los Alamitos

Respondent's Exhibit No. 24—(Continued)

No. 2. Signal Hill Laboratory and Station O.K. No pickets. Two pickets at Plant 5. On. Ditching machine about halfway between Gundry and Walnut. Backfilled up to the west side of Gundry. Went to L. A. Works to change books. Several pickets and police in front of refinery gate.

(Signed) Geo. Cody

Q. (By Mr. Brooks): Mr. Dreyer, I would like to direct your attention now to September 28, 1948, and ask you if you had a conversation that day with Mr. Cody? A. I did.

Q. Where did it occur?

A. In Mr. Jones' office, at the L. A. Works.

Q. Who was present?

A. Mr. Jones, Cody, and myself.

Q. How did you happen to be present at that time with the other two?

A. It was just about noontime. I was leaving my office and I was in the hall. As I passed the door to Mr. Jones' office I saw Mr. Cody in there and I went in.

Q. Will you tell us what happened at that time and what was said by whom, as best you can now remember?

A. The part of that conversation that I recall was a discussion with Mr. Cody in regard to gauging.

Q. Will you tell us how this conversation started, or who opened it, and what was said?

Mr. Hackler: May that answer be stricken?

Mr. Brooks: It may be stricken.

(Testimony of Elmer L. Dreyer.)

Trial Examiner Scharnikow: That may be stricken. [2554]

The Witness: The conversation had to do first with an injury to Mr. Cody's shoulder.

Q. (By Mr. Brooks): May I interrupt you again, Mr. Dreyer. You haven't been around here while this hearing has been going on, but we must have your best recollection of the substance at least of what was said, rather than conclusions. It is a little technicality. Would you mind telling us now as best you can the substance of what was said and by whom? Of course, if you can give the exact words, of course that is what we want.

A. My best recollection is that when I entered the room I asked Mr. Cody how his shoulder was. He replied to the effect that he was able to work, that his shoulder was not in any condition that would prevent him from working.

Q. Why did you make inquiry about his shoulder? Had something happened?

A. He had been in an automobile accident a few days previously.

Q. Had he not been working immediately preceding this conversation, if you know?

A. No, sir. Mr. Cody had not worked. It had been his regular days off for, I think, three days immediately preceding this conversation.

Q. Very well. Now, after this opening of the conversation wherein you inquired and he responded with respect to his [2555] shoulder, what happened?

(Testimony of Elmer L. Dreyer.)

A. I instructed Mr. Cody to go to the Yorba Linda station.

Q. Will you tell us as best you can what you said?

A. I said, "George, I want you to go to the Yorba Linda station and gauge, sample, take temperatures on the tanks. We need the information for the first of the month reports," meaning by that our October 1st reports.

I said, "We have been advised that there are no pickets at the station. There may be some from time to time. If there are, select any time between now and the 1st of October to do the work. Don't get into any argument with the pickets if there are any there, but back off. We don't want it that bad."

Mr. Cody said that he could not do it, or would not do it.

I instructed him a second time to do the work and he again refused. So then I told him there was only one thing left for me to do, and that was to make out his final pay order, and then I left the room.

Q. How long were you in there with Mr. Cody and Mr. Jones?

A. Oh, possibly ten minutes.

Q. Do you remember anything else that was said by you or by Mr. Cody or by Mr. Jones while you were there?

A. No, sir, nothing other than I have already stated.

Q. Did you at that time tell Mr. Cody to prepare the [2556] station to operate?

(Testimony of Elmer L. Dreyer.)

A. I did not.

Q. Did Mr. Jones say anything while you were in there that you remember? A. No, sir.

Q. Describe the monthly reports you made reference to.

A. As of the first of each month complete inventory reports were prepared, showing all of the oil stocks in all of the tanks. These are tabulation reports, two of them particularly, one known as tankage and stock report, and the other one showing the summary of the oil on hand, which is called the trial balance.

* * * * *

Q. Well, what else, now, was said that you have not told us about?

A. It comes back to me that when Mr. Cody refused to do the gauging and sampling work that I had instructed him to do at the Yorba Linda tanks, I told him that he would have to decide whether he was going to be on our team or not.

Mr. Cody then replied, "Can't I be on a team of my own?"

And I said, "No, there are only two teams in this game."

Q. Was there anything else said that you now recall?

A. No, I don't recall anything now.

Q. Did you leave the room first of those three, Mr. Dreyer? A. I did.

Q. What did you do, now, after you left the room?

(Testimony of Elmer L. Dreyer.)

A. I went back to my office and instructed the secretary to make out a final pay order for George Cody.

Q. When did you next see Mr. Cody, if you remember?

A. I don't remember seeing him again until the 8th of November, 1948.

Q. Did you see him at that time by any previous arrangement? A. Yes. [2558]

Q. How was it made?

A. Mr. O'Connor called me on the telephone and asked me if I would have any objection to seeing Cody. I told him no, and an arrangement was made for a meeting with Cody. That was done a day or two previous to November the 8th.

Q. Where did you see him on the 8th?

A. In my office.

Q. Who was present?

A. Mr. F. A. Jones, Cody, and myself.

Q. Well, will you tell us as best you can remember at the present time what was said in that conversation, and again try your best to tell us the substance of what was said by each person.

A. First, Mr. Jones did very little of the talking. Cody and myself carried on the conversation principally. Cody told me that he would like to have his job back as assistant foreman—assistant district foreman. We discussed the reasons for his being dismissed—

Mr. Hackler: I move the answer be stricken.

Mr. Brooks: That may be stricken.

(Testimony of Elmer L. Dreyer.)

Trial Examiner Scharnikow: So ordered.

Q. (By Mr. Brooks): You tell us what was said, Mr. Dreyer. Just tell us as best you can the substance of what you said and what he said.

A. I was trying to get it in some sort of order.

Mr. Hackler: We want it in the order of the conversation. You understand that? We want it in the order of the conversation as you recall it.

The Witness: That is what I was trying to do. Mr. Cody told me that he had refused to perform the work assigned on September the 28th because he was afraid that if he did, his home or his person or his family would be injured, that his condition or circumstances were different than other employees, because of the particular activities he had taken in committee work.

I told him that that was not sufficient reason for refusing to do the work. Mr. Cody told me in the conversation that Mr. O'Connor had sent for him, that he had not asked to see Mr. O'Connor. Mr. Cody told me that during the conversations with Mr. O'Connor, that Mr. O'Connor had told him that had he, meaning Mr. O'Connor, been in my place, he would have granted Cody a leave of absence.

I told Cody that during the strike period all available men, particularly supervisors, were needed and that we could not grant any leaves of absence or any vacations during that period.

At the end of the conversation or toward the end of the conversation I told Mr. Cody I would consider

(Testimony of Elmer L. Dreyer.)

his request for reinstatement and that I would advise him at a later date. [2560]

Q. (By Mr. Brooks): Do you remember anything else now that was said?

A. Mr. Cody referred to his——

Q. Tell us what was said.

A. Mr. Cody said that in view of his 21 years' service and experience and training that he had—well, that those were points in favor, that should be given favorable consideration to his reinstatement.

Q. I believe you testified you told Cody you would think it over; is that right?

A. Or words to that effect.

Q. That you would call him? A. I did.

Q. Did you call him? A. I did.

Q. How long afterwards, what date, if you remember?

A. It was on the 11th of November, 1948.

Q. This was a telephone call?

A. This was a telephone call from me to Cody.

Q. What was said in that telephone conversation?

A. I told Cody that I had carefully considered his request for reinstatement and that I could not reinstate him. I told him that I wished him luck in finding work some place else. He thanked me and that was the end of the conversation.

Q. When did you next see George Cody? [2561]

A. I think it was on November 16, 1948.

(Testimony of Elmer L. Dreyer.)

Q. Did you see him at that time by pre-arrangement? A. Yes, sir.

Q. What was that pre-arrangement?

A. Mr. Cody phoned me on the afternoon of November 15th and asked to see me that afternoon. I was unable to see him at that time and made a tentative appointment for the morning of the 16th, asked him to phone me on the morning of the 16th to confirm that appointment. He did.

Q. Where did you see him on the 16th?

A. In my office.

Q. Who was present?

A. Mr. F. A. Jones, Cody, and myself.

Q. Will you relate to us now, Mr. Dreyer, as best you can, what was said by whom in that conversation?

A. In this conversation Mr. Cody told me that when I phoned him on November 11th that was the first time he realized that he had made a serious mistake in not performing the work on September 28th, the work I had instructed him to do.

He asked me at that time if there was any work for him in the pipe line division, even in a classified occupation. I think he used the words "even in the gang."

I told him again that I would consider his request and advise him later as to my decision.

During this meeting Cody also stated that he wanted to [2562] preserve his 21 years' service record.

(Testimony of Elmer L. Dreyer.)

Mr. Hackler: That is objected to and I move it be stricken.

Mr. Brooks: Can't he state what the man said?

Mr. Hackler: I have been rather patient.

Trial Examiner Scharnikow: Not responsive?

Mr. Hackler: Not responsive, purely voluntary, not in the context. I haven't objected thus far to this witness rambling.

Mr. Brooks: I asked him what he said.

Mr. Hackler: What he remembers Cody saying. We don't have a conversation in any form——

Trial Examiner Scharnikow: I think you are entitled to that. However, I will not strike the answer. I think you should have the witness tell us——

Mr. Brooks: Is this an instruction? Am I to pinpoint these conversations and bring them out? I did that with one witness and it was objected to strenuously. I asked the man to tell us what was said. He told it in narrative form, I admit.

Trial Examiner Scharnikow: That is true. Let us find out definitely, in view of the length of the answer, whether this is in the order these things happened, so far as the witness now recalls. I will not strike any part of the answer, however. [2563]

Q. (By Mr. Brooks): Mr. Dreyer, you have testified that at this time Mr. Cody asked whether there was a vacancy in the pipe line division in a classified position, is that right?

A. He asked me if he could be employed in a classified division.

Q. You have also stated that he said——

(Testimony of Elmer L. Dreyer.)

Mr. Hackler: Just a moment. It is obvious this is going to be leading. There is no reason why this witness can't relate a conversation as others did. I will refer you to the record when our boys were testifying to conversations. This is a crucial matter and everyone knows it.

Trial Examiner Scharnikow: Let's find out the order in which these things were said.

Q. (By Mr. Brooks): Mr. Dreyer, would you tell us the order in which these conversations occurred, as best you can?

A. I don't know at this stage the order in which the conversations occurred.

Q. Tell us what was said in response to what, as best you can recall.

A. During the conversation Mr. Cody said to me that he was over 40 years old; that it was difficult to find work any place else; that he wanted the job back with The Texas Company; that he wanted to preserve his 21 years' service record.

Q. What, if anything, did you say in response to that?

A. I told Mr. Cody that I would consider his request and advise him—I told him at that meeting that if I gave him the answer then and there, the answer would be no, but that I would consider the request and advise at a later date as to my decision.

Mr. Cody said, "Then, please don't answer me now."

That was about the end of the meeting.

Q. When did you next talk to Cody?

(Testimony of Elmer L. Dreyer.)

A. Some three or four days later. I think about the 19th of November.

Q. How did you talk to him at that time?

A. I called him at his home on the telephone.

Q. What was said at that time by you and by Cody?

A. I told Cody that my decision was that he could not be reinstated in any position, and I told him that I hoped he would have good luck in finding work some place else. He thanked me.

Q. Is that all that was said in that phone conversation?

A. That is all that I recall.

Q. Do you remember when you saw Cody next, to talk with him, or see him at all?

A. I saw him again on February 1, 1949.

Q. Did you talk with him by phone before February 1st and after this phone call in November?

A. Yes, I talked to him in January of '49.

Q. By telephone? A. By telephone.

Q. Did he call you or did you call him?

A. He called me.

Mr. Brooks: May we take time out at this time to get these exhibits straightened out? The photostats have now returned and I want to get them into the hands of the reporter.

Trial Examiner Scharnikow: Very well. We will recess for 10 minutes.

(Short recess taken.)

Trial Examiner Scharnikow: On the record.

(Testimony of Elmer L. Dreyer.)

Q. (By Mr. Brooks): I believe, Mr. Dreyer, that before the recess you testified about a telephone conversation from Cody to you. Is that correct?

A. That is correct.

Q. Let's see, I believe you said that was January, in January.

A. Yes, sir. He called me about the middle of January.

Q. What was that conversation as you now remember it?

A. Cody asked for an appointment to see me. I made an appointment to see him that same day, and that was the end of that particular conversation with me.

Q. Did you see him that day?

A. No, I did not. [2566]

Q. Did you talk to him again?

A. Not on that day, no, I did not.

Q. Was the appointment canceled?

A. The appointment was canceled.

Q. How?

A. My secretary reported to me that in my temporary absence from the office, Cody had phoned and said that he had received another phone call, that he would not be able to keep the appointment, and that he would get in touch with me later.

Q. Did he? A. He did.

Q. When? A. On the 1st of February.

Q. How?

A. He phoned me at my office.

Q. What was said?

(Testimony of Elmer L. Dreyer.)

A. He asked if he could come over to see me, and I made an appointment with him to see him that same afternoon. I told him to come over that same afternoon.

Q. Did he come over that afternoon?

A. He did.

Q. Did you have a conversation with him?

A. I did.

Q. Was anyone present other than you and Cody? [2567] A. Mr. F. A. Jones.

Q. What was that conversation, Mr. Dreyer?

A. Cody again asked for reemployment in the pipe line division.

Q. Mr. Dreyer, will you tell us what was said?

A. Mr. Cody said, "Is there any job available for me in the pipe line division?"

I told him that the matter had been fully considered, that there was no job for him in the pipe line division.

He asked me my ruling was final, and I told him that it was, and that my authority was final.

Cody asked me if I had the final say-so in the matter and I told him yes, that I did.

Mr. Cody, as he left the room, he stopped in the doorway and turned and said that he had done everything possible to convince me to put him back to work, but that he would not give up trying to get his job back to preserve his 21-years service record.

Mr. Hackler: Will you read the last answer back, please?

(The answer was read.)

(Testimony of Elmer L. Dreyer.)

Q. (By Mr. Brooks): Did you make any response to that?

A. Not that I recall.

Q. Was there anything else said in that February 1st conference which you now recall which you have not told us?

A. There were other things said, but I don't recall them [2568] here now.

Q. You can recall nothing else at the present moment that was said in that conversation?

A. I have been thinking during the interval and it comes back to me that Cody said, "Is there any chance for a job in any other department of the company?"

I told him that my authority was limited to the pipe line department and that I had nothing to say about any of the other departments or divisions of the company.

Q. Do you recall anything more now?

A. No, sir, I don't, not right now.

Q. I want to ask you, Mr. Dreyer, if it refreshes your recollection if I inquire whether or not anything was said about the nature of the offense on September 28th, at this conversation, the nature, or the severity, or the gravity of the offense.

Mr. Hackler: It is a leading question for the purpose of refreshing the witness' recollection?

Mr. Brooks: That is right.

The Witness: At one of the conversations, and I think it was the February 1st conversation, Mr. Cody stated that other employees had from time to time

(Testimony of Elmer L. Dreyer.)

committeed offenses for which they had been penalized, such, for example, as by a layoff without pay, but that in his case he had been discharged and not penalized. [2569]

He stated that he thought that this penalty was unusually severe.

I told him that in considering his case I had taken into account the fact that I thought his refusal to work was premeditated, that it wasn't anything done on the spur of the moment.

I referred back to our conversation of November 8th, which it now comes back to me that in that conversation I had asked Cody if he would go into Plant 5 at which I thought there were picket lines. [2570]

Cody on November the 8th said no, that he would not pass through the picket lines, that I should ask somebody else to do that.

Mr. Hackler: I move that this answer be stricken, Mr. Examiner. What we have here is a garbled version of two conversations.

Mr. Brooks: He has identified them.

Mr. Hackler: The question is what the man said. He says now, "I recall something I said back in an earlier conversation."

Trial Examiner Scharnikow: It makes it very difficult for counsel to follow it.

Mr. Hackler: His memory was completely exhausted as to the other. He could have been properly refreshed if refreshment he needed as to the other.

Trial Examiner Scharnikow: I certainly am not

(Testimony of Elmer L. Dreyer.)

going to stop the witness from testifying to anything that is material, Mr. Hackler.

Mr. Hackler: I don't expect you to, but we are up here in February now and get a long, rambling account of something he thinks he said in an earlier conversation.

Trial Examiner Scharnikow: He didn't say he thinks. He is now testifying directly.

Mr. Hackler: Then he switches over to an incident that happened back in November. I move the answer be stricken and [2571] we start fresh on what the witness knows about this conversation.

Trial Examiner Scharnikow: No, I won't strike it. I think the answer is clear. There is no question about its being material.

Mr. Hackler: Let's have that answer read.

(The record was read.)

Trial Examiner Scharnikow: I will deny your motion to strike.

Mr. Hackler: You understand the motion is directed to the last portion of that answer with reference to the passing through the picket line proposition and not to the first part which appeared to be at least a statement of what took place in this conversation.

Trial Examiner Scharnikow: Yes, the last part of that answer.

Mr. Hackler: Of course, none of it is responsive to the question, which was, "Does this refresh your recollection?"

(Testimony of Elmer L. Dreyer.)

Trial Examiner Scharnikow: I will deny the motion to strike.

Q. (By Mr. Brooks): Mr. Dreyer, you heard the answer read back. Have you now exhausted your recollection regarding what was said on that subject at this conversation of February 1st?

A. In the February 1st conversation I referred and told [2572] Cody that on November the 8th he had stated at that time he would not as of November the 8th pass through a picket line.

Q. Did he respond to that?

A. He made no answer to that on February the 1st, no.

Q. What else did you say, if anything, in that connection?

A. I told him in that connection that having refused to do the work on September the 28th and apparently being of the same mind on November the 8th, that that made his offense different, more severe than the cases he had referred to as suffering only penalties rather than being discharged. [2573]

* * * * *

Cross-Examination

(By Mr. Hackler): Mr. Dreyer, referring to page 1 of Respondent's Exhibit 24, which is your log for September 9, 1948, Mr. Brooks directed your attention to an item recorded in that log by J. L. Redding, which reads "Pearce No. 1 pumping, tank O.K." From that item can you tell where that oil was going that was being pumped?

(Testimony of Elmer L. Dreyer.)

A. Yes, I think—— [2650]

* * * * *

Q. Then Mr. Brooks invited your attention to the facts on page 5 of the same exhibit, down at the bottom, in an item signed by Rogers, at 9:00 o'clock a.m., of September 12th, that the Pearce and some other named wells were still pumping. A. Yes.

Q. You note that? A. I see that.

Q. Then, in the same exhibit, on page 7, he invited your attention to an item of September 15th, at the bottom of the page, under the time 0615, where it says "Pearce still pumping." A. I find that.

Q. You find an item on page 11 to which your attention was invited on the report of Mr. Redding, again, for September 20th, in which he said Pearce No. 1 was still pumping? A. I find that.

Q. You find those items? A. Yes.

Q. Can you refer to the gathering chart there and tell us when gathering operations took place with reference to Pearce 1? I am referring now to Respondent's Exhibit 16.

I will strike that.

What field is Pearce 1 in?

A. Pearce 1 is in the Huntington Beach field.

Q. The Huntington Beach field—let me ask you preliminarily, on Respondent's Exhibit 16 it appears to have been gotten up [2651] so that chronologically you have earliest dates up to the latest dates by fields, do you not? Do you note that?

A. That is correct.

Q. On the first page of that exhibit we find the

(Testimony of Elmer L. Dreyer.)

Huntington Beach gathering operations starting down in the lower third, with a movement on the 8th day of September of the J. H. Marion oil from a location known as Cole 4. You note that?

A. That is correct, I note that.

Q. It was gauged and tested by the Southern California Oil & Refining Company.

A. The correct name is So-Cal.

Q. So-Cal Oil & Refining. Going down there, I will ask you if it isn't a fact that exhibit shows the only gathering operation of oil from the well known as Pearce and indicated here, occurred on the 27th of September, so far as the exhibit is concerned.

A. That is the only gathering operation in the Pearce lease that occurred during that period of time. [2652]

* * * * *

Q. (By Mr. Hackler): In the course of their riding these lines and observing anything you expected them to report anything amiss they might see in the production, purely production areas, did you not? A. That is correct. [2660]

* * * * *

Q. (By Mr. Hackler): Now, is it a fact that every time that a gate is opened, that does not indicate that there is necessarily a flow of oil, does it, into the gathering system?

A. No, a gate could be open without flow of oil.

Q. It is sometimes opened to equalize pressure as between gates?

A. Not in the usual course. It could be done.

(Testimony of Elmer L. Dreyer.)

Q. It is done sometimes, isn't it?

A. Infrequent occasions. [2668]

* * * * *

Q. (By Mr. Hackler): Referring now to page 13 of Respondent's Exhibit 24, concerning which you were questioned, Mr. Brooks invited your attention to an entry there. It says, "The New Bradford well is still pumping." In what field is the New Bradford well?

A. The Bradford well is in the Richfield Field.

Q. Can you refer to the Richfield Field on Respondent's Exhibit 16 and tell me on what date oil was gathered from the New Bradford well?

A. I don't offhand know whether the Bradford well referred to in the notes as the New Bradford well is on Bradford No. 1 or Bradford No. 2 Lease. There are two identifications.

Q. You don't know what he had reference to by "New Bradford"?

A. All that I know is that there was a new well on one of the Bradford leases, and that was the one he was referring to, but I don't know which lease that is.

Q. Will you check and see if either of the Bradford wells—there is any movement into the gathering system on the 22nd of [2669] September when this entry was made?

A. No, there is no movement indicated for either of the Bradford leases for the 22nd of September.

Trial Examiner Scharnikow: Now, this is referred to as the New Bradford well. Was that well

(Testimony of Elmer L. Dreyer.)

served by the gathering system on September 22nd?

The Witness: Yes, it was.

Q. (By Mr. Hackler): Now, there is a notation in the same September 22nd entry of Cody as to Huntington Beach wells all running. Do you note that? A. I do.

Q. Will you look on the other chart here and indicate on that date what movements of oil were being handled by the pipe line facilities, Huntington Beach?

A. The only movement shown on the 22nd is a shipment from the Termo Oil Company.

Trial Examiner Scharnikow: Movement to?

The Witness: No, from the Termo Oil Company.

Q. (By Mr. Hackler): On the 22nd. Is that correct? A. That is correct, on the 22nd.

Q. And it further shows as to that shipment that it was gauged by a SoCal employee. Is that correct?

A. That is correct.

Q. And was pumped by a Termo Oil Company employee. A. That is correct. [2670]

* * * * *

Q. (By Mr. Hackler): Now, that item, "Wells all running," how many wells are there approximately at the Huntington Beach Field?

A. I don't know. I would say maybe somewhere between 25 and 50. I mean Texas Company wells.

Q. Texas Company wells. This wasn't a Texas Company well that this movement went from, was it?

A. No, sir.

Q. It wasn't a Texas Company well, nor was the shipment processed by The Texas Company, was it?

(Testimony of Elmer L. Dreyer.)

A. It went through part of The Texas Company gathering system, and the run ticket was made out by a Texas Company employee.

Q. It was gauged and pumped by the people who owned the [2671] oil lease, wasn't it?

A. It was gauged by the company who finally received the oil. That is the SoCal Oil and Refining Company. And pumped by employees of the Termo Oil Company.

Q. Now, this item, "Wells all running," does that have reference to the fact that the well pumps were operating? Would you so understand it?

A. I do.

Q. You could see that from the road, couldn't you, just as a matter of observing a rocking beam in most instances, wasn't it?

A. That would be true in most instances.

Q. Sometimes they are in a shed, aren't they, but more frequently they are out in the open?

A. Generally, in the Huntington Beach, you could see when it was in operation.

Q. Look out and see some rocking arms. Isn't that right?

A. That is correct.

Q. But so far as the pipe line operations were concerned, you have indicated the only one you observed from that field on that day.

A. That is correct.

Q. Now, it says here further, "Some wells are running in Montebello." Will you check the Montebello Field here and check your exhibit and show

(Testimony of Elmer L. Dreyer.)

me all of the gathering that went [2672] out of the Montebello system?

A. The exhibit indicates that there was no gathering from the Montebello Field from September the 4th to September 27th.

Q. It doesn't show anything in the pipe lines moving out there, does it?

A. No; that is correct.

Q. But it does show here Cody at least reported that some wells were running over there.

A. That is right.

Q. You understand that to mean that is the pump on the top of the well? A. That is the well pump.

Q. Well pump, let's call it, then.

Now, he says he talked to a man named Hopkins and Hopkins said he ran the tanks until they were full. Do you know who Hopkins was?

A. A producing department employee.

Q. He wasn't under your supervision or under Cody's was he? A. That is correct.

Q. To what tanks would reference be there?

A. I can't tell by the context. It could have been the producing department tanks or could have been the pipe line tanks at our station.

Q. Is there a pipe line tank there at Montebello?

A. No, sir, because that note follows after Yorba Linda, [2673] and where Cody said, "New Bradford well still running," that indicates to me that he was still at Yorba Linda.

Trial Examiner Scharnikow: Richfield?

The Witness: Richfield.

(Testimony of Elmer L. Dreyer.)

Mr. Hackler: Richfield Lease.

The Witness: Yes.

Q. (By Mr. Hackler): A production man, according to this, told him he was going to run until the tanks out there were full.

A. That is correct.

Q. You don't know whose tanks those would be, from this report here?

A. Not from this, I can't tell.

Q. Do you have pipe line tanks out there?

A. We have tanks out there at our Yorba Linda station in the Richfield Field.

Q. Can you tell from the Tank 2013, whose tank that was? Is that a pipe line tank?

A. A pipe line tank.

Q. What does the reference mean, that it is open to the field?

A. That means that the valve on the tank—the valve in the line coming in to the tank was open so that oil coming from the gathering system in the field would be directed into that tank. [2674]

Q. Then he says, "All tanks are full, the producing pumper told me." Would that indicate there was a producing pumper observing that operation going on there?

A. That indicates that there was a producing pumper working. I don't know whether that "All tanks" refers to pipe line tanks or producing department lease shipping tanks.

Q. When the lease tanks get full, of course, they would shut down, unless there was some movement

(Testimony of Elmer L. Dreyer.)

into the pipe line system, wouldn't they? They would have to.

A. Unless the oil was removed by tank trucks or in some other fashion.

Q. Was there any of that movement to your knowledge during this period of the strike?

A. There was.

* * * * *

Q. I invite your attention to page 14 of Respondent's Exhibit 23, covering an item of Cody's on the 18th day of [2675] September, as to which you testified. It says there that all of the leases in the Santa Fe Springs area are pumping again, on the 18th of September. By reference to Respondent's Exhibit 16 could you tell me what movements, if any, there were on that day at Santa Fe Springs—"All leases in Santa Fe Springs are pumping again"?

A. To me that entry means that all of the wells were pumping, not the lease shipping pumps.

Q. "On to Montebello. All of these leases are running." That has reference to the movement of the wells pumping?

A. To me it has that meaning, yes.

Q. Since you have already testified that there was not any gathering from Montebello during the period, is that correct? A. That is correct.

Q. "Drove to Signal Hill. Checked station gate and laboratory doors. Harlow-Kent, Bauman, and Campbell leases are running again."

Are those in Signal Hill?

(Testimony of Elmer L. Dreyer.)

A. Those are in the Signal Hill Field, yes, sir.

Q. Referring to Respondent's Exhibit 16 and the Signal Hill portion of it, does it show any movement of oil into pipe line system from that field during, or for these particular three wells I just mentioned——

A. No, there is no movement shown for the leases you just mentioned. [2676]

* * * * *

Q. Now, I notice on page 15 of this Respondent's Exhibit 23 your attention was called to a statement over Cody's signature on September 19th, that the O'Neil wells are pumping. Where are they located, in what field?

A. The O'Neil wells are located on the O'Neil Lease in the Signal Hill Field.

Q. The same answer would apply, would it not, that during this period under consideration there was no movement of oil from the O'Neil wells into your system? A. That is correct. [2677]

Q. Referring now to page 17 of Respondent's Exhibit 23, your attention was invited to an item there that "Tank 2013 is open to receive." Do you note that? A. I do.

Q. Do you know on what lease that is?

A. Tank 2013 is a pipe line tank at our Yorba Linda station.

Q. It could serve any of the leases there?

A. Oil could be received in that tank from any of the leases in the Richfield Field, to which our system is connected.

(Testimony of Elmer L. Dreyer.)

Q. That would indicate that oil was going into this tank from some operation out there, is that right?

A. That is correct.

Q. Or at least it was open to receive oil.

A. It was open, ready to receive it.

Q. Indicate whether oil was actually moving or not?

A. Of itself it does not show whether the oil was actually moving.

Q. Above that we have an item—where is the Elliot Lease?

A. The Elliot Lease is at Huntington Beach.

Q. That would indicate it did not take place near this tank, is that right?

A. That is correct.

Q. Mr. Cody recites a conversation he had there with Mr. Letson, by the Elliot Lease at Huntington Beach, doesn't he? [2678]

A. It does.

Q. Now, referring to September 21st at the Krug Lease, the last movement of oil shown on Respondent's Exhibit 16 was on the day before, the 20th, was it not?

A. That is the last date shown for a movement, on the 16th. However, if a movement started on the 20th, carrying over to the 21st, it would in our records be reported on the 20th under these circumstances.

Q. Let's be sure what we have here. When you say that this is the movements of oil, you mean to say they may have started that day and continued continuously thereafter?

A. They may have continued for more than the one day, yes, sir.

(Testimony of Elmer L. Dreyer.)

Q. What is the fact in regard to the exhibit when it was prepared?

A. The exhibit was prepared from the original record, which is the run ticket. And the run ticket is dated, the date of the run ticket is the date on which the tank is started to ship. Under other than strike conditions we frequently have what we call split tickets. In other words, we make a ticket for each day on which a tank is shipped. Even one shipment may have more than one run ticket; during the strike period we did not do that. It is very possible and very probable a shipment started from the Krug Lease on the 20th, if it did, it would carry over and continue into the 21st. [2679]

Q. It is your testimony that, so far as this exhibit is concerned, then, that you only show the time the shipment started? A. That is correct.

Q. That is all you purport to show on this copy, is that right? A. That is right.

Q. You don't know how long after that it might have persisted then?

A. I don't know, but generally it would not continue for more than into the following day.

Trial Examiner Scharnikow: That is because of the capacity of the tank?

The Witness: As compared to the pump. There may be more quantity of oil in the tank than the pump can pump out in one day. [2680]

* * * * *

Q. (By Mr. Hackler): Mr. Dreyer, I note on Respondent's Exhibit No. 16, the second page thereof,

(Testimony of Elmer L. Dreyer.)

some oil movements in the Whittier Hills Field. Do you note that, sir, some four movements, I believe?

A. That is correct.

Q. Are there any pumps at that field?

A. No Texas Company pipe line division pumps.

Q. Pumps that in normal operations are operated by Texas Company employees; is that right?

A. That is correct. [2690]

* * * * *

Q. Now, after November 16th, on which date, according to my notes, you testified you had a meeting with Cody, were there any other new hires in jobs under your supervision?

A. There were. [2705]

Q. How many?

Mr. Brooks: Mr. Examiner, is it material as to the number? If the question here relates to whether the pipe line division employed people in jobs for which Cody was qualified, after November 16th, we will stipulate that such was done. Is it material to go into the number? I just think that it will take time.

Trial Examiner Scharnikow: Will you stipulate—I am concerned, of course, with a meaningful stipulation for my purposes. Are you stipulating that on November 16th and at all times thereafter there was an open available job of the specific type which Cody could fill?

Mr. Brooks: I can't stipulate that on the 16th and at all times.

(Testimony of Elmer L. Dreyer.)

Trial Examiner Scharnikow: Will you stipulate that that was the fact on November 16th?

Mr. Brooks: I can't do that. I am not advised on that, if that is the question.

Trial Examiner Scharnikow: That was the question. I think that is the intent of the question.

Mr. Hackler: I will rephrase the question, and perhaps we can get it as quickly by testimony.

Mr. Brooks: All right.

Q. (By Mr. Hackler): According to the record I have on the 4th day of September a strike settlement agreement was [2706] entered into which I believe bears your signature. Do you recall entering into the strike settlement agreement with reference to the pipe line people?

A. I do, but I think you mentioned the wrong date. I understood you to say the 4th day of September, and it was the 4th day of November.

Q. I am sorry, and I see by referring to the exhibit that it bears the signature of Mr. O'Connor on the strike settlement agreement.

A. The strike settlement, but I signed the agreement which resulted from that.

Q. And the collective bargaining agreement does bear your signature, that is the pipe line agreement which has been received into evidence.

A. That is correct.

Q. Following the strike settlement agreement and the signing of the contract, the remaining strikers in your department were promptly scheduled back to work, were they not?

A. That is correct.

(Testimony of Elmer L. Dreyer.)

Q. I believe the strike settlement agreement provides that "The refining department agrees it will schedule these employees to return to work in job classifications they occupied on September 3rd, such schedules to provide for return to work in an orderly manner consistent with good operations and all employees to be at work within 5 working days after execution [2707] of the new agreement referred to."

Do you recall that provision of the settlement?

A. I recall a provision of that nature, yes.

Q. And then the people remaining strikers were scheduled back promptly after the settlement and the contract, were they not?

A. That is correct, all except one or two who had obtained work elsewhere and did not return.

Q. That is what I was going to get at. Do you know that there were several or some of the strikers who did not desire to return?

A. Yes, there are at least two.

Q. Do you know Mr. Dawson? A. I do.

Q. Was he one who did not return?

A. He was one.

Q. Sir?

A. He was one of those who did not return.

Q. What was his job prior to the strike?

A. I am not sure, but his length of service, he would probably have been a roustabout.

Q. How about Grant? Do you know a Mr. Grant who worked under your supervision before the strike?

A. I do. I do recall that we had a Mr. Grant.

(Testimony of Elmer L. Dreyer.)

Q. Did he return after the strike? [2708]

A. I don't recall if he did, and I don't recall that he did not. I have no definite recollection regarding Grant.

Q. What was his job prior to the strike, if you recall?

A. He was a relatively new employee, and would have been either a laborer or a roustabout.

Q. Do you know a Mr. Shelton, who did not return after the strike? A. I know Mr. Shelton.

Q. What was his job?

A. Again, he was one of the newer employees, and was probably either a laborer or a roustabout.

Q. Do you have any recollection of what jobs these men actually had?

A. No, sir. There are too many employees for me to identify a particular man in a particular job where there are new employees. The older men that I know better I would know.

Q. Do you recall any of the older men that did not return after the strike?

A. No, sir, I don't recall any of the older men that did not return.

Q. Do you know any of the men who did not return other than the three I have mentioned?

A. Yes, there was one other that I recall.

Q. What is his name? [2709] A. Perkins.

Q. Perkins? A. Yes, sir.

Q. What is his job?

A. I think he was a roustabout.

Q. At the time you talked to Cody on the 16th

(Testimony of Elmer L. Dreyer.)

of November, had people been hired to fill those vacancies left by the strikers who had not returned, if you know?

A. I don't know definitely, but I will say in all probability there had been.

Q. There had not been?

A. I say, in all probability there had been.

Q. Your records, of course, would show any hiring between the 4th of November, the settlement day, and the 16th of November, would they not?

A. That is correct.

Q. Were those jobs filled by new men or transfers from other Texas Company operations, if you recall?

A. If they were filled, they were filled by new men.

Q. And subsequent to November 16th, to your knowledge, have people been hired in any of the classifications under your jurisdiction?

A. Yes, people have been hired as laborers.

Q. Hired in any other capacity?

A. Under my jurisdiction in The Texas Company? [2710]

Q. Yes. A. No.

Q. Hired in at the bottom job, in other words?

A. That is correct.

Trial Examiner Scharnikow: That is roustabout?

The Witness: No, sir. The bottom job is laborer.

Q. (By Mr. Hacker): Subsequent to November 16th, did any vacancies arise in classifications higher than roustabout which were filled by promotions,

(Testimony of Elmer L. Dreyer.)

thereby making way for the hiring of laborers or roustabouts? A. Yes, sir.

Q. In what classifications?

A. Between November 16, 1948, and today, there have been vacancies in the gaugers' classifications, have been vacancies in the pumper No. 1 classification, and each of those vacancies makes a vacancy in the lower classifications, because by promotion men go up the ladder in seniority.

Q. Do you have any judgment as to the earliest of those vacancies occurring after November 16th?

A. The earliest permanent vacancy that I think of occurred about February, 1949.

Q. After February 1, 1949?

A. I think it was on February 1, 1949, the first one I think of.

Q. What was that vacancy? [2711]

A. That was a vacancy in the line rider classification.

Q. And that was filled by promotion?

A. That was.

Q. And subsequently a laborer or roustabout was filled by reason of the promotion, I take it?

A. We don't always hire a new man on the bottom to fill a vacancy at the top. The number of employees we use is flexible and we might hire several laborers to take care of the work at the bottom when there were no vacancies at the top, and likewise there might be vacancies at the top and because the work was completed at the bottom, we don't hire anybody. So

(Testimony of Elmer L. Dreyer.)

top vacancies do not always mean hiring at the bottom.

Q. Have any new men been hired since February 1st in any classification? A. Yes.

Q. February 1st of this year, you understand?

A. That is right, yes.

Q. I think you mentioned a roustabout and laborer.

A. I think they have all been hired as laborers.

Q. Under the terms of your contract, vacancies above that rate were subject to the provisions of the contract with reference to employees being upgraded, current employees being upgraded to take such vacancies. Is that right?

A. That is correct. [2712]

Q. You testified concerning the occasion on September 28th, when you discharged Cody. I am not clear on how you happened to be present at that time. Would you just state that in the record, please?

A. At the time of that meeting Cody was in Mr. Jones' office, the office door was open, it was about noontime. I was leaving my office, walking through the hall, and I looked in and I saw Cody and Jones in the office and I went in.

* * * * *

Q. At the time of your November 8th meeting with Mr. Cody, to your knowledge, were there still some pickets at any of the production operations of the company?

A. At the time of that November 8th meeting,

(Testimony of Elmer L. Dreyer.)

it was my understanding that there were still pickets at gasoline Plant 5.

Q. To your knowledge, that was the only place there were pickets, isn't that true?

A. That is the only place that I thought there were any pickets left at that time.

Q. That is the gasoline Plant 5?

A. That is correct.

Q. At the time of your meeting with Mr. Cody—between November 4th, the settlement date, and November 8th, when you [2713] met with Mr. Cody, had you or any persons under your supervision in fact sent any pipe line employees across that picket line into the gasoline plant to gauge or sample or do any other work? A. Not to my knowledge.

Q. Had you received instructions from Mr. O'Connor not to send the returning pipe line employees across that picket line? A. I had not.

Q. Had you received any instructions from anyone? A. I had not.

Q. Had you discussed it with anyone?

A. I had not.

Q. Anyone in management?

A. I had not. [2714]

* * * * *

Q. After the settlement of November 4th and after you were aware that a picket line persisted at the gasoline plant, did the subject of making a decision as to whether to send your men across that picket line arise at all to your knowledge?

A. No, sir.

(Testimony of Elmer L. Dreyer.)

Q. Did it come to your attention any of your employees had [2715] been asked to cross it and refused?

A. No supervisory employee except Cody ever refused to cross any picket line.

Q. The subject just didn't come up, is that your testimony?

A. In regard to the picket line at Plant 5?

Q. Yes. A. That is correct. [2716]

* * * * *

Redirect Examination

Q. (By Mr. Brooks): In this November 8th conversation did you ask Cody to go to Plant 5 or did you ask him whether he would go if he were required?

A. I said to Cody, would he go through the picket line at Plant 5 if I should so instruct him to.

Q. What did he say?

A. He said that it would be unfair for me to ask him to do that, said he would not do it, that I should ask somebody else to do it. [2719]

* * * * *

Q. Referring to Respondent's Exhibit No. 15, which is the flow chart now, while an oil well is pumping, where is the oil going?

A. The oil from the well while it is pumping usually goes into a lease shipping tank.

Q. At that point the oil is either stored for a period of time or at some time thereafter it is pumped out of the tank into the pipe lines, is that correct?

A. That is generally correct. There are occasions

(Testimony of Elmer L. Dreyer.)

when the oil may go through another tank before it gets to the lease shipping tank in order to facilitate the withdrawal of water, but for practical consideration it goes into the lease shipping tank. [2720]

* * * * *

Q. The pipe line division may be moving oil then, I take it, from the tanks, the lease shipping tanks, on occasions when wells are not pumping, is that right? A. That is correct.

Q. Then wells might pump on occasions when the pipe line division is not removing oil, is that correct?

A. That is correct.

Trial Examiner Scharnikow: Would the pipe line division be removing oil from a lease shipping tank into the gathering line, for example, taking it into the gathering line when the well would be pumping into that tank?

The Witness: No, sir, the pipe line would not move oil from a lease shipping tank into the pipe line at the same time that the well was producing into that tank. There are usually—I might say that on Exhibit 15 only one lease shipping tank is indicated. There are usually at least two shipping tanks in a group [2721] or battery, so that the well or wells may produce in the one tank while shipment is made from another tank.

Trial Examiner Scharnikow: So that an observation by any of your men of the type that is repeatedly made in Respondent's Exhibits 23 and 24 that wells were pumping, would not be an indication one way or another that at the same time you were

(Testimony of Elmer L. Dreyer.)

taking into your gathering line oil from one tank served by that well?

The Witness: It is not a positive indication, sir.

Trial Examiner Scharnikow: Does it indicate a likelihood one way or the other?

The Witness: When it is repeatedly reported that the wells are pumping, it is, I think, a safe presumption that the tanks will fill and must be shipped out from time to time to make room for the wells to pump into. If wells are pumping only on one occasion and were shut down shortly thereafter, it might indicate that the lease tanks were full, but when wells are reported pumping day after day it means that the oil had to be moved out of the way to make room for it.

Q. (By Mr. Brooks): To clarify the question regarding the dates on the left-hand column of Respondent's Exhibit 16, that date indicates what?

A. That is the date shown on the run ticket and indicates the date on which the shipment was—the tank was gauged and presumably the shipment was started. [2722]

Q. That is the date that the shipment through the pipe line facilities started?

A. That is correct.

Q. It has nothing to do then with whether wells were pumping on that particular day on that particular lease.

A. That is correct.

Q. Is a valve sealed at any time while it is open, or is it only sealed while closed?

A. I know of no instances that we seal the valves

(Testimony of Elmer L. Dreyer.)

open. We always seal them in the closed position.

* * * * *

[2723]

Recross-Examination

Q. (By Mr. Hacker): Well, are you familiar with the Oakley Lease? A. Yes, sir.

Q. In what field is it located?

A. That is in the Torrance field.

Q. According to Respondent's Exhibit No. 16, it does not show any movement of oil from the Oakley Lease on that chart. I will ask you to look at it.

A. No, sir, there is no movement from the Oakley Lease.

* * * * *

Q. Now, you testified that oil is normally pumped into these [2728] lease shipping tanks. Isn't it a fact that in more than one instance it first goes into settling tanks?

A. Yes. I referred to that by stating that in many instances, or in some instances, it goes through other tanks to facilitate the drawing of water before it goes into the shipping tanks.

Q. And the settling tanks are two tanks, one on top of another, are they not?

A. I would say it was just one tall tank.

Q. The purpose there is to let the nonusable portion of it settle, I take it? A. That is correct.

Q. And while it is in the settling tanks it remains there for a period of time to permit that settling to take place?

A. The oil and water goes into the settling tanks

(Testimony of Elmer L. Dreyer.)

and the oil leaves the top of the settling tank simultaneously. That is a continuous operation.

Q. So that the bottom of that tank merely holds the unusable, the water, is that right?

A. That is right, and the water may be bled off or withdrawn continuously.

Q. Now, you testified, in response to a question of the Trial Examiner, that if one observed the wells pumping over a period of time, that person would normally infer that the tanks would become full at some time and the material moved from them through the gathering system. Do you recall that testimony?

A. I do.

Q. Of course, that would depend on the amount of flow from the well, would it not, as to how rapidly you fill the tanks?

A. That is correct.

Q. Isn't it a fact that some of your wells will not fill the average size tank in a month of pumping?

A. We have some wells that would not fill the tank in a month's pumping, yes.

* * * * *

Q. So that it actually varies according to the amount of oil a particular well is putting out?

A. That is correct.

Q. And there are others that might be filled in 48 hours, I take it?

A. Or less. [2730]

* * * * *

Q. (By Mr. Hackler): Prior to the occasion on September 28th, when you asked Cody to do gauging and sampling, had you or, so far as you know, anyone under your supervision asked him to do that type

(Testimony of Elmer L. Dreyer.)

of work from the time of the strike up to that date?

A. On that same date Mr. Jones asked him to do that same work that I had asked him to do.

Q. Prior to that date do you know of any occasion when he [2732] had been asked to do that type of work?

A. Not to my own knowledge, no, sir, I do not.

Q. He had not been scheduled to do any of that type of work, had he, prior to that time?

A. He had not. [2733]

* * * * *

FIELDER A. JONES,

a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Avery): Will you give the reporter your name and address, please?

A. Fielder A. Jones, 3 Middle Ridge Lane North, Rolling Hills, California.

Q. What is your position with The Texas Company, Mr. Jones?

A. Assistant superintendent, pipe line division.

Q. How long have you held that position?

A. Since 1937.

Q. Did you have a meeting with the Workmen's Committee in the pipe line division on September 3, 1948?

A. I did.

Q. Who arranged the meeting, if you remember?

A. The afternoon of September 3rd negotiations were going on in the Los Angeles office. Up there at that meeting, I was at that meeting, and Mr. Bean,

(Testimony of Fielder A. Jones.)

who was chairman of the Workmen's Committee, was at that meeting, also. That meeting was continued on until midnight. However, it took a recess around supper time, and it was apparent that there would be no possibility—or change that, it appeared that there might possibly be a strike at midnight.

I spoke to Mr. Bean and made arrangements to have a meeting [2734] at 11:00 o'clock at night at my office, in case there was not a settlement before that time.

Q. Did you meet?

A. We did meet at 11:00 p.m. in my office.

Q. Who was present?

A. Mr. Bean and Clarence Gunning representing the Workmen's Committee; management was J. R. Letson, J. C. Wilson, and myself.

Q. And will you tell us what the discussion was about and who said what, as you remember?

A. I believe I opened the meeting and said that there had been discussion in the afternoon in case the Oil Workers went out on strike it would be necessary that we have an orderly shutdown, or they were discussing shutdowns. So we told the Workmen's Committee it would be necessary to keep some of the fields operating longer than others, some of the gaugers would probably have to stay on the following day, until such time as the shipments were out and the oil was into the various pump stations, and that the operators at pump stations would stay on duty until this oil was in.

Mr. Bean said this would be entirely satisfactory.

(Testimony of Fielder A. Jones.)

Q. Were there any other subjects discussed at that meeting?

A. Yes; after the discussion of the shutdown, there was discussion on issuing of passes to people outside the bargaining unit. I told Mr. Bean that I thought the passes should be [2735] issued to all members who were outside the bargaining unit, that is, supervisory forces and office help.

Mr. Gunning did most of the talking for the Workmen's Committee when discussing the passes. Mr. Gunning said that they didn't feel as if they could issue passes to everybody that was not covered by the bargaining unit. He said that they would just issue passes for the maintaining the department in shutdown condition; in case of any operating that they would pick up the passes that they issued.

He stated that they didn't want to put out too many passes, said it was bad morale for the picket line if there were too many passes out, and he also indicated that he didn't see why some of the office people should have passes and go in and work when there were so many people who were going to be outside the picket line and wouldn't be able to work during that period.

Q. Were passes refused anybody at that meeting?

A. Yes, at that meeting—maybe I had better clear this up, if I might. These were just temporary passes that were discussed at this particular meeting. They didn't have any regular passes made up. At this meeting passes were refused to clerical help. We had two junior engineers that did not get passes, two

(Testimony of Fielder A. Jones.)

telephone repairmen that didn't receive passes. George Cody didn't receive a pass, because he was on vacation.

Q. Do you remember any other discussion at that meeting?

A. That was the principal part of the discussion. I told Mr. [2736] Gunning that I still felt that management should have—I say management, I mean people outside the bargaining unit—anyone who was in the bargaining unit should have a pass to get through the picket line as easily as possible. It was my understanding that anyone outside the bargaining unit had a perfect legal right to come through the picket line, and I think they should all have a pass so they could come in and not have a disturbance on the picket line trying to get through, which I thought would happen if they didn't have a pass.

Q. Do you remember anything else being said about passes at that meeting, Mr. Jones?

A. That is my full recollection at this time.

Q. When did you next meet with the Workmen's Committee?

A. The next meeting was on the morning of September 6th.

Q. Who called that meeting, Mr. Jones, if you remember?

A. I called the meeting.

Q. And who was present?

A. For the Workmen's Committee H. S. Bean, Delbert Clayton and C. T. Rednour.

For management J. R. Letson and myself, J. C. Wilson. The secretary also attended the meeting.

(Testimony of Fielder A. Jones.)

Q. Then will you relate the conversation at that meeting as best you can?

A. I told the Workmen's Committee that I still felt that passes should be issued to all the people in the department [2737] who were outside of the bargaining unit. I had a list and checked over this list of everyone that was out of the bargaining unit. The Workmen's Committee, Mr. Bean, stated that they still felt the same as they had in the previous meeting on September 3rd. They did not believe that passes were necessary for all the people for which I requested, and to keep up the morale of the picket line they would only issue passes to a certain percentage of the group which I had requested.

* * * * *

Q. (By Mr. Avery): Anything else said at that meeting, Mr. Jones?

A. Mr. Bean or Mr. Clayton stated that the passes given would be for operating—not be given for operating work, and in case any operations were started, why, the union would pick up the passes that they had issued.

Q. Do you remember anything else said about passes at that meeting?

A. No, sir, I think that covers it. [2738]

* * * * *

Trial Examiner Scharnikow: Did you agree to any statement made by anybody at the meeting there would be no movement of oil?

The Witness: No, sir.

Q. (By Mr. Avery): Did you make any state-

(Testimony of Fielder A. Jones.)

ment that pass-holders would do no productive work?

A. No, sir. [2740]

* * * * *

Trial Examiner Scharnikow: I will sustain the objection.

Did anyone make the statement that no productive work would be done?

The Witness: The union committee, Workmen's Committee, stated they were giving the passes to maintain the department in a shutdown condition; if any operating work was performed, they would pick up the passes.

Trial Examiner Scharnikow: What answer or comment did you make to that?

The Witness: I made no comment whatsoever. We told them that we desired the passes because we considered that all the people not covered by the bargaining unit were legally entitled to them.

Q. (By Mr. Avery): Mr. Jones, did you have a telephone conversation with Mr. Cody on or about September 8th or 9th, 1948?

A. That is correct.

Q. Did you call Mr. Cody or did he call you?

A. Mr. Cody called me.

Q. Will you relate that conversation as best you can?

A. Mr. Cody called me September 8th or 9th, I think it was Thursday or Friday of the week preceding when he was supposed to report back to work from his vacation. He called in and said he was returning from his vacation, was ready to go to work.

(Testimony of Fielder A. Jones.)

I told him that there was a strike on, I was glad that he called because his schedule would be different than it normally would be. I told him we had a special schedule for him.

His car was in the refinery, where he had left it, and we also had a pass for him to go through the picket line. George said that he didn't want to come in and pick up his car and pick up his pass, because he didn't want to come through the picket line at the refinery without a pass.

I told George that we would deliver the pass and his schedule to his house and would deliver the car out to the Los Alamitos headquarters and he could pick it up out there.

George asked what type of work he would be doing and I told him that we were running a 24-hour patrol and he would relieve one of the men on that patrol when he reported to work and continue the patrol work. I stated briefly we were checking the pipe lines and the tank farms, that he could get the details from the man that he relieved when he reported to work.

Cody indicated he would report to work according to schedule——

Q. Tell us what Cody said, as you remember it, Mr. Jones.

A. Cody said that he would report to work at the time mentioned in his schedule when he received the schedule. He hadn't received it at that time. [2742]

* * * * *

Q. Mr. Jones, do you know whether anyone who

(Testimony of Fielder A. Jones.)

didn't have a pass during the strike reported for work, anyone under your supervision?

A. Yes, I do.

Q. Could you give us the names of those people who did, or the persons? A. B. W. Hammer.

Q. What kind of work did he do for the company?

A. He worked in the office.

Q. Anyone else?

A. P. T. G. Biery. I am not sure of that third initial.

Q. What was his job?

A. He was an office worker.

Q. Anyone else? A. M. Ratkay.

Q. What was his job?

A. He was an office worker, and also had done relief oil dispatching.

Q. Anyone else that you recall? [2743]

A. J. M. Dent.

Q. What was his job?

A. He was a material clerk.

Q. Anyone else? A. J. R. Letson.

Q. What was his position?

A. District foreman.

Q. Anyone else? A. E. M. Mistern.

Q. What was his job?

A. Well, it is the other sex, works in the office.

Q. Her job. Anyone else?

A. W. B. Skinner.

Q. And his job? A. Oil clerk.

Q. Anyone else? A. L. M. Reichenbach.

Q. What was his job? A. Field gauger.

(Testimony of Fielder A. Jones.)

Q. Were there any more?

A. I have a lot more, yes.

Q. Well, I want to limit this. All these people whom you have named, did they go through the picket line prior to September 28th?

A. No, sir, the last one mentioned did not. [2744]

Q. Did not. He went through after September 28th, I take it?

A. That is correct.

Mr. Avery: That is all I have, Mr. Examiner.

Trial Examiner Scharnikow: May I interrupt just a second on this?

How do you know these people did not have passes?

The Witness: I know they did not have passes because they were not issued passes at the meeting on September 6th held in my office with the union representatives, would not give passes to those people except one of the instances, J. R. Letson. He was issued a pass at that time.

Trial Examiner Scharnikow: He was issued a pass?

The Witness: That is correct. His pass was picked up by the union previous to September 28th and destroyed.

Trial Examiner Scharnikow: What do you know about it being picked up?

The Witness: I just have the word of Mr. Letson.

Trial Examiner Scharnikow: Did you ask for passes for all these people whom you have just mentioned?

The Witness: Yes, sir, I did.

(Testimony of Fielder A. Jones.)

Trial Examiner Scharnikow: That was on September 6th?

The Witness: Both on September 3rd and September 6th.

Trial Examiner Scharnikow: Were the passes given to you for the other people?

The Witness: Not in all instances, no, sir. [2745]

Trial Examiner Scharnikow: Was there a definite refusal—strike that. Did someone for the union on September 3rd and September 6th say definitely that passes would not be given to these people, excluding Letson?

The Witness: That is correct.

Trial Examiner Scharnikow: You made a request for such a pass in the case of Reichenbach?

The Witness: No, sir, Reichenbach, I understood he was stricken from that list, because he came up after September 28th. I think he should be.

Trial Examiner Scharnikow: Did you make a request for a pass for Reichenbach on September 3rd and September 6th?

The Witness: No, sir.

Trial Examiner Scharnikow: But in the case of all these other men you did, and the girl?

The Witness: Yes, sir. [2746]

* * * * *

Cross Examination

Q. (By Mr. Hackler): Now, you mentioned that you were in Los Angeles in the home office up until some time in the evening of September 3rd. Do you recall that testimony? A. Yes, sir.

(Testimony of Fielder A. Jones.)

Q. And that you remained in the Los Angeles office until some time in the evening? [2753]

A. In the late afternoon.

Q. And then you made arrangements for a meeting at 11:00 o'clock that night with the Workmen's Committee, is that right? Let me put it this way—

A. Bean and I got together at that meeting and decided to have a meeting in my office at 11:00 o'clock that night.

Q. I see. Bean had been at the same meeting you were at in Los Angeles?

A. That is correct.

Q. The meeting at 11:00 was at your office at Signal Hill?

A. Wilmington.

Q. Wilmington; your office is in Wilmington, is that right?

A. Yes, sir.

Q. Had you been in a meeting the day before, September 2nd, in the Los Angeles office?

A. My recollection is there was a meeting the afternoon of the previous day.

Q. Those were bargaining meetings, weren't they?

A. That is correct.

Q. Were substantially the same people present at the September 2nd and September 3rd meetings in Los Angeles? Let me rephrase that. I don't want to go very much into this, but to establish the facts of the meeting. Let me ask you if at the September 2nd and 3rd meetings in Los Angeles there were representatives of the Union and representatives of the [2754] management there, not only the pipe line but also the other refining departments.

(Testimony of Wallace E. Avery.)

A. Wallace E. Avery, 1524 North Pacific, Glendale.

Q. What is your present employment and position?

A. Attorney for The Texas Company.

Q. Located in Los Angeles?

A. Yes, 929 South Broadway.

Q. Were you occupying that position in 1948, Mr. Avery? A. I was. [2774]

Q. There is in the evidence here as General Counsel's Exhibit No. 13 a strike settlement agreement, which I show you. I will ask you if some time in early November you had a meeting with any representatives of the Union concerning the matter of putting into effect or carrying out any portion of that settlement? A. Yes, I did.

Q. When? A. On November 3rd.

Q. Where?

A. At our offices in Los Angeles.

Q. Will you tell us about that meeting, telling first who was present, and then describe the meeting, the conversations?

A. Mr. Mattern, Carl Mattern, Mr. Lindsay Waldon——

Q. Who is Mr. Waldon?

A. Mr. Waldon is general counsel for the Oil Workers International Union; Mr. Mattern is a district director, I so understood; Mr. George Whitney, who is an attorney of the firm of Gibson, Dunn and Crutcher, and myself met to consider action necessary to put Paragraph 5 of the Strike Settlement

(Testimony of Wallace E. Avery.)

Agreement into effect. That paragraph has to do with the agreement on the part of the refining department not to prosecute the civil action, and the agreement on the part of the Union not to prosecute the unfair labor practice charges. [2775]

* * * * *

Q. When was this last phone call, Mr. Avery?

A. I believe it was around noon on the 18th, I think. Yes, I think that was the date. And I told either Mr. Brown or Mr. Waldon that we would draw up the necessary papers dismissing the lawsuit and withdrawing the unfair labor practice charge, and that we would be over later that afternoon.

Q. Did you go over that afternoon?

A. Yes.

Q. Where did you go?

A. Mr. Whitney had drawn up the stipulation dismissing the lawsuit. I drew up the request for withdrawal. [2785]

Q. Is the stipulation the one which is attached to the motion to dismiss which was filed earlier in this proceeding and was attached to that motion as the Appendix C?

A. That is true.

Q. Did you see Mr. Brown or Mr. Waldon or both that day?

A. I did.

Q. Where?

A. At the Alexandria Hotel. Mr. Whitney and I, with these two documents, went to the Alexandria Hotel.

Q. What was the other document?

A. The withdrawal request.

(Testimony of Wallace E. Avery.)

Q. Is that the—— A. It is.

Q. ——withdrawal request which is Appendix B?

A. That is right.

Q. Go ahead. [2786]

A. Mr. Whitney handed the stipulation to Mr. Waldon, and I handed the withdrawal request to Mr. Brown. Before, however, Mr. Brown signed the withdrawal request, I told him that he had placed me in a very peculiar position; that I had been the union's advocate with my people, and that they were not at all satisfied that the union would keep its word and not file new charges. They had been concerned, I told Mr. Brown, that they felt that since the union had struck the company without doing very much negotiating, that they might likewise turn around and not keep their word and file new charges, and that I had been placed in a rather embarrassing position and that if Mr. Brown, if the union did not keep its word, that I would be—that I would in effect be double-crossed.

Mr. Brown stated this, that he could not prevent an individual striker from filing a charge, and I agreed that he could not, but he did say that the union, that I could depend on the union not encouraging or filing any new charges.

In that same conversation Mr. Brown mentioned Mr. Cody and said that Mr. Cody might file a charge, because he felt that when he was asked to do productive work that the company had in fact demoted him, and that it was possible that Mr. Cody would file such a charge, but the union would have nothing

(Testimony of Wallace E. Avery.)

to do with it. Mr. Brown then signed the withdrawal request and Mr. Waldon and Mr. Whitney executed the stipulation.

* * * * *

Cross Examination

Q. (By Mr. Hackler): Mr. Avery, in this meeting on the 3rd day of November, the first meeting you testified to, had the parties at that time agreed on the terms except for the drafting the document which became the written strike settlement agreement in the refining department?

A. My recollection is, Mr. Hackler, that that document had already been drafted.

Q. By "that document," you are referring to the November 4th written strike settlement agreement signed by O'Connor, Mattern and Mr. Myers?

A. General Counsel's Exhibit No. 13.

Q. General Counsel's 13? A. Yes, sir.

Q. That had been drafted and approved by yourself and the attorneys for the union?

A. Well, I don't know about the attorneys for the union, Mr. Hackler. I know it had been approved by our legal department, by myself and, I believe, by Mr. McNair.

Q. I believe you testified that Mattern, Waldon and George Whitney were present with yourself at that meeting? A. Yes, sir.

Q. And that the purpose of that meeting was to discuss what documents it would be necessary to draw in connection with the last paragraph of that written strike settlement [2790] agreement?

(Testimony of Wallace E. Avery.)

A. That is true.

Q. The parties at that time knew this settlement agreement was going into effect as soon as it was signed, I take it?

A. Well, no, it wasn't quite that way, Mr. Hacker. I believe that on the 3rd the union was to have a membership meeting, at which the strike settlement agreement would be ratified. I am not too clear on that, but I believe that was the case.

Q. Let me ask you if the strike settlement agreement had been reduced to typewritten form by that time? A. Yes, it had.

Q. Had it been examined and approved by Matern or other union representatives, so far as they were concerned, subject perhaps to the ratification of the membership? A. I believe it had.

Q. When you met with them, were they aware of the contents of the document?

A. Yes, sir, they were. [2791]

* * * * *

Q. By the terms of Paragraph 5 of this agreement, which is General Counsel's Exhibit 13, it states that the refining department will not prosecute the pending law suit heretofore filed against the union or its members, or institute any new [2792] law suits for any alleged damage to the refining department or its employees arising out of the current strike. You note that? A. I see that.

Q. Do you know who drafted this document?

A. I believe that was a joint effort.

(Testimony of Wallace E. Avery.)

Q. Did you participate in the joint drafting of it? A. Yes, I did.

Q. Was it the purpose of that section, the portion I just read, to bring about the dismissal of not only the damage suit but also the injunction action, insofar as it applied to the refining department?

A. Both.

Q. Both? A. Both, that is right.

Q. In other words, the carrying of that out would entail the refining department being completely out of the law suit? A. That is true.

Q. Is that right? A. That is right.

Q. Both as to claims for damages or injunction, is that right? A. That is true.

Q. When did the pickets leave? When did they cease picketing in the refining department? After the signing of this document?

A. This is hearsay, what I am going to give you. I believe [2793] that picketing was discontinued as to the refining department properties on the 5th of November.

Q. The day after this settlement was signed.

A. The day after this was signed.

Q. As a matter of fact, the settlement provides that the people be scheduled back to work as soon as it was signed, does it not? A. Yes. [2794]

* * * * *

Q. You understand my question has to do with your claim for [2798] money damages, and isn't it a fact that the claim you had urged in the law suit and the only one of which you were aware at that time

(Testimony of Wallace E. Avery.)

was a claim that the company through its inability to operate its properties because of the strike had suffered by way of drainage, loss of profits, and so forth?

A. I would still not agree just because of the strike. If you will say that because of mass picketing and so on, I will agree with you.

Q. Assume mass picketing was one of the causes, so far as the Complaint is concerned, that you were unable to operate your properties, would your answer be that still your claim for damage was bot-tomed on loss of profits and other money losses, due to your inability to operate your property?

A. Yes, there was no destruction of property.

Q. That is what I am getting at. There was no claim in the Complaint, or at the time you were meet-ing with these people on the 3rd were you aware of any claim by the company against any of the pro-duction strikers for having inflicted damage, physi-cal damage, to your properties?

A. By destruction?

Q. Yes. A. That is true. [2799]

* * * * *

Q. Was there any discussion between yourself and either of us with reference to how many de-partments or separate bargaining units were in ex-istence at The Texas Company?

A. I don't believe so, except this, Mr. Hackler, that I think I told you there were three producing department units which were not included in a formal strike settlement agreement.

(Testimony of Wallace E. Avery.)

Q. What was the date of this meeting, November 19th? A. Yes.

Q. The withdrawal request was in your presence signed by me, was it not? A. Yes.

Q. And a copy given to you? [2824]

A. Yes, several copies.

Q. After my telephone conversation with Mr. Brown? A. That is right.

* * * * *

Q. The settlement agreement in the refinery was not produced or a copy shown or delivered, was it?

A. I had it in my possession, but I don't think we looked at it.

Q. It wasn't brought out at all, was it?

A. I don't think so. I don't recall that it was. Our conversation was quite short, according to my recollection. [2825]

* * * * *

Q. (By Mr. Hackler): Mr. Avery, I hand you a document marked for identification as General Counsel's Exhibit No. 49 and ask you if that is your signature on that letter? A. It is.

Q. This appears to be a letter of March 30th, addressed to [2826] Mr. Martin Zimring. You know he is a Field Examiner who was investigating this case at that time? A. Yes.

Q. You say, "In accordance with your request, we are enclosing a copy of the strike settlement agreement dated November 4, 1948, and entered into between the refining department of The Texas Company and the Oil Workers International Union."

(Testimony of Wallace E. Avery.)

Do you know how that request was made by him, whether in writing or orally?

A. I believe that was made orally. That is my recollection.

* * * * *

Q. And you attached to this letter a copy of the November 4th strike settlement? [2827]

A. That is right.

Q. Isn't it a fact that until this letter was sent on March 30, 1949, you had not—to your knowledge, the Labor Board had not been supplied with a copy of that strike settlement agreement?

A. To my knowledge, the Board had not been.

* * * * *

[2828]

Q. (By Mr. Hackler): I hand you a document marked for identification as General Counsel's Exhibit 52 and ask you if that is a letter that you wrote addressed to the attention of Mr. Zimring, bearing your signature, which is a reply to a letter you received enclosing a copy of the charge filed by George Cody?

A. Yes, it is. [2840]

Q. So that I am clear, you mentioned that you did not file any documents to dismiss. I note that this letter does say on March 2, 1949, "We respectfully request the Regional Director to dismiss this charge."

A. Yes. I had reference to formal motions.

Q. Yes, that is what I had reference to.

I will ask you to examine this General Counsel's Exhibit No. 52, of March 2nd, and if that letter was not in reply to a letter which accompanied your copy

(Testimony of Wallace E. Avery.)

of the Cody charge and invited a statement of position with reference to Cody's case.

A. My recollection is that that is a fact, that this is in response to your form letter asking for a statement of my position.

Q. Of your position. I will ask you if in your letter you made any reference to a settlement agreement as being binding upon or as being a cause for dismissing and disposing of Cody's case?

A. I did not.

Q. As stated in the letter, you simply said that he was discharged as a supervisor, because he refused to perform duties assigned to him, namely, securing gauges and tank temperatures and samples at the Yorba Linda station.

A. That is right. [2841]

* * * * *

ALFRED GEORGE CODY

a witness recalled by and on behalf of the General Counsel, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Hackler): Mr. Cody, you have previously been sworn as a witness in this matter?

A. Yes, sir.

Q. You are the same George Cody who testified earlier?

A. Yes, sir.

Trial Examiner Scharnikow: Alfred George Cody.

The Witness: Yes, sir.

Q. (By Mr. Hackler): You recall in your direct testimony that you mentioned some black books in

(Testimony of Alfred George Cody.)

which you made entries as you were riding the lines while you were working during the strike?

A. Yes, sir.

Q. I think you were present here in the courtroom when the two black books were produced and typewritten copies of them were placed into evidence as Respondent's Exhibits 23 and 24?

A. Yes, sir.

Q. Now, Mr. Cody, in your direct examination, your examination [3089] in chief, you testified that you could only recall two occasions on which you had actual knowledge that oil or petroleum products were moving through the pipe lines.

With respect to those two occasions, what did you have reference to?

A. I had reference to the time that I heard the oil coming in at Los Alamitos, and at that time the only other one I could recollect was the one at the Elliot lease in Huntington Beach.

Q. Now, with reference to oil moving through the pipe lines, did you have reference to any particular pipe lines in your testimony?

A. Yes, through our pipe lines.

Q. By "our pipe lines," what do you mean?

A. Why, the ones owned by The Texas Company.

Q. Are there pipe lines that are under the control and operation of the production department?

A. Yes.

Q. I will put it this way: Are there pipe lines in

(Testimony of Alfred George Cody.)

the system that the movement of oil is handled by production people through those pipes?

A. From the oil to the line, yes.

Q. From the oil to the lease shipping tank?

A. From the oil well to the lease shipping tank.

Q. On those two occasions that you had reference to, did you [3090] include in the two occasions that type of movement? A. No.

Q. Did you have reference to movements which the pipe line division would normally handle?

A. Yes, sir.

Q. Since Respondent's Exhibits 23 and 24 have been received into evidence, did you at my request examine all of the entries in those, in the log books that bear your name? A. Yes, sir.

Q. In other words, the entries made by you.

A. Yes, sir.

Q. After examining them, did you find anything that refreshed your recollection with reference to the pipe line shipments that directly came to your attention? A. Yes, I did.

Q. What did you determine in that respect?

A. I determined that in the notes that I wrote into the book that I had notified the company that there was a movement of oil at the Yarnell lease, Yorba Linda.

Q. Was that in addition to the two occasions which you have testified to? A. Yes, sir.

* * * * *

[3091]

Q. (By Mr. Hackler): Will you check the exhibit which is Respondent's Exhibit 24, at page 10, the

(Testimony of Alfred George Cody.)

entry which begins at the bottom of the page and contains your signature on the following page, and see if that is the one that you had reference to in your testimony? A. Yes, it is.

Q. That is page 10 of Respondent's Exhibit No. 24, an entry of September. Is that the one to which you had reference? A. Yes.

Q. It was your testimony here that Yorba Linda is used as a pump station for the Richfield field?

A. That is right.

Q. With reference to the entries appearing on that date, what portion of the entry made by you that date are you referring to as a report of operations of the pipe line division?

A. On page 10, the third paragraph.

Q. The part that begins, "Went to Yorba Linda via pipe line"? [3092] A. Yes, sir.

Q. Can you tell us in your own words what happened on that occasion? A. Yes, sir, I can.

Q. All right, what did happen?

A. I drove up to check the Yorba Linda pump station and noted that Mr. Letson and Mr. Hopkins were standing on the bank above the tanks at the Yarnell lease, and I also noted that the pipe line pump was running.

I asked Mr. Letson what was going on. He said he didn't know.

I also noted the other notes that I showed, that the tank suction was open on a tank at that lease and another one was closed and the seals were broken.

Q. Now, the entry indicates, says a stream was

(Testimony of Alfred George Cody.)

going into Tank 10006. Was that a pipe line tank?

A. Yes, sir, that is a storage tank at the Yorba Linda pump station.

Q. A pipe line storage tank? A. Yes, sir.

Q. Not a lease shipping tank? A. No, sir.

Q. Was it in connection with the movement of oil into that tank that you questioned Letson, or some other movement?

A. It was the line being open into that tank and the note [3093] that the pipe line pump was running at the Yarnell lease that I made that note.

Q. You say "the pipe line pump." Do you say that in distinction to some other type of pump?

A. Yes.

* * * * *

Q. I believe it was your testimony you did look over the other entries in the book that bears your signature and that you found no other occasions other than the one in Yorba Linda and the two you mentioned in your testimony, namely, Huntington Beach and Los Alamitos, where you actually observed oil movements in the pipe line system under your supervision. Is that right?

A. That is right, as I understood them. [3094]

Q. You heard a good deal of testimony here, did you not, with reference to entries made by yourself to the effect that wells were pumping and wells were operating at various times. You heard that testimony? A. Yes, sir.

Q. You observe a number of statements over

(Testimony of Alfred George Cody.)

your signature where notations of that kind are made, do you not? A. Yes, sir.

Q. Did those notations at the time you made them have reference to an observation on your part that oil was moving in the pipe line under your jurisdiction? A. No, sir.

Q. Was it your understanding that at least during the strike you were to report matters of that kind, matters that would normally come under production operation as distinct from pipe line operation?

A. Yes, especially the operations of the field. I mean by that, I was to note what wells were on and which ones were off, and I tried to do that.

Q. It was your understanding that the company wanted that information? A. Yes, sir. [3095]

* * * * *

Q. (By Mr. Hackler): Was this type of book-reporting used before the strike? A. No, sir.

Q. So that the books came into existence just at the time of the strike, as far as you know?

A. Came to my knowledge when I came back to work on the 13th of September.

Q. I believe you said the person who turned the book over to you told you the type of thing that the company was interested in. A. That is right.

Q. And by "interested in" I mean for the purpose of making any entries in the book, is that correct? A. That is right.

Q. Now, in the observations made, or statements made by you in various places "Wells pumping," the

(Testimony of Alfred George Cody.)

number of wells pumping, and "All wells pumping," on a given lease, what would be the basis of that? Would it be just the observation of movement of the pump, or that you had actually gone out and inspected it?

A. Just the operation of the pump in motion.

Q. You were in an automobile as you drove by?

A. Yes, sir.

Q. Did you get out of the automobile in each of those instances when the entry at a given lease was made?

A. No, sir; only in the cases when I observed that seals were broken, and that was on our lines.

Q. Inviting your attention to a chart received in evidence, which is Respondent's Exhibit 16, you will note, Mr. Cody, that this covers gathering operations between September 4th and September 27th.

You note that? A. Yes.

Q. I believe you have had an opportunity to see this or a copy of it before you are on the witness stand now? A. I have.

Q. This shows some movements, and it shows the gauging and sampling in connection with them, and on numerous occasions shows Mr. Letson as gauging and sampling in connection with those shipments on both The Texas Company oil and oil which was taken from producers. A. Yes, sir.

Q. Did you see Mr. Letson gauge or sample upon any of those occasions? A. No, sir.

Trial Examiner Scharnikow: Or on any occasion.

(Testimony of Alfred George Cody.)

Q. (By Mr. Hackler): Or on any occasion prior to the time [3097] you were fired?

A. No, sir. Talking about the period during the strike?

Q. Yes. A. No, sir.

Q. I mean, of course, after your return from vacation and while you were still working during the strike. A. No.

Q. Did he at any time tell you during that period that he was doing gauging and sampling?

A. No.

Q. Or that he was issuing any run tickets?

A. No.

Q. Did you ever see any run tickets issued by him? A. No, sir.

Q. On the occasion that you testified to at Yorba Linda, you said you questioned Mr. Letson with reference to what was going on, and what was his reply? A. That he didn't know.

Q. Were there any other occasions on which you asked Letson what was going on with reference to gathering systems, or if he knew what was going on?

A. Yes, sir.

Q. More than one occasion? A. Yes, sir.

Trial Examiner Scharnikow: You testified as to one other [3098] on your direct. Are there others than those two now, the one in the Board's case and the one on your present appearance on the stand?

The Witness: That is the only two times that I remember.

(Testimony of Alfred George Cody.)

Q. (By Mr. Hackler): And on both occasions what was his reply?

A. He denied that he even knew what the So-Cal gauger was doing on top of the Elliot tank.

Q. I believe in the direct testimony you mentioned an occasion when some gauger of some other company, I forget just the name of that company, that you discussed or had a conversation with Mr. Letson with reference to who was gauging a tank, and it turned out to be, according to Letson, a man from what company? [3099] A. So-Cal.

Q. In your direct testimony I mean——

A. No, I didn't say the right one.

Q. You didn't say the right name of that company. Does this exhibit, and particularly the writing "So-Cal equals So-Cal Oil and Refining Company", with reference to Huntington Beach gauging on the 8th or at various times where the word So-Cal appears under gauging, is that what you had reference to?

A. That is the gauger I had reference to. [3100]

* * * * *

Q. Now, was it your testimony that you understood in the course of the strike you were to put in the black book matters connected with the production department as well as matters under the pipe line division?

A. Only to the extent of the wells that were running in the different fields.

* * * * *

Q. (By Mr. Hackler): Now, in reading over the

(Testimony of Alfred George Cody.)

information from this black book, do you know whether the reference is made therein by you or others to seals or in all instances numbered seals?

A. No.

Trial Examiner Scharnikow: Do you know now whether in any of those cases the seals referred to were numbered seals in your report, for example, under Respondent's Exhibits 23 and 24?

The Witness: Yes, those were. [3108]

Trial Examiner Scharnikow: All of them?

The Witness: Yes, sir, all of them were numbered seals that I referred to.

Q. (By Mr. Hackler): In each instance you referred to a numbered seal did you put the number down in your report, as far as you can recall?

A. Number of the tank, not the number of the seal. It wouldn't be there. [3109]

* * * * *

Q. (By Mr. Hackler): Now, let me ask you, Mr. Cody, if prior to the strike and while you were acting as a gauger for the company, if any occasions, to your knowledge, arose when the suction gates shown on General Counsel's Exhibit 47 at those tanks were opened at a time when oil was not being shipped through the gathering system? A. No. [3114]

* * * * *

Q. (By Mr. Hackler): Prior to the strike, did pipe line employees gauge and sample the gasoline tanks at Plant 5? A. Yes, sir. [3119]

In the United States Court of Appeals
for the Ninth Circuit

No. 12916

THE TEXAS COMPANY, a corporation,
Respondent,
vs.

NATIONAL LABOR RELATIONS BOARD,
Petitioner.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.87, Rules and Regulations of the National Labor Relations Board—Series 6, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a consolidated proceeding had before said Board, entitled, “In the Matter of The Texas Company and Robert Rissman,” and “In the Matter of the Texas Company and George Cody,” the same being known as Cases Nos. 21-CA-295 and 21-CA-375, before said Board, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and the order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Order designating Isadore Greenberg, Trial

Examiner for the National Labor Relations Board, dated October 11, 1949.

2. Order designating William F. Scharnikow Trial Examiner for the National Labor Relations in place and stead of Isadore Greenberg, dated October 25, 1949.

3. Stenographic transcript of testimony taken before Trial Examiner Scharnikow on October 26, 27, 28, and 31, November 1 through 4, 7, 8, 11, and 14 through 19, 21, 22, and 23, 1949, together with all exhibits introduced in evidence; also rejected exhibits.

4. Joint request of Petitioner (Respondent before the Board and General Counsel, dated December 2, 1949, for extension of time for filing briefs before the Trial Examiner.

5. Copy of Chief Trial Examiner's telegram, dated December 5, 1949, granting all parties extension of time for filing briefs.

6. Petitioner's telegraphic motion to dismiss the amended consolidated complaint dated May 15, 1950. (Denied, see Trial Examiner's Intermediate Report, dated June 16, 1950, page 3.)

7. General Counsel's opposition to Petitioner's motion to dismiss the amended consolidated complaint dated May 18, 1950.

8. Copy of Trial Examiner Scharnikow's Intermediate Report, dated June 16, 1950 (annexed to Item 18 hereof); order transferring cases to the

Board, dated June 16, 1950, together with affidavit of service and United States Post Office return receipts thereof.

9. Petitioner's telegram, dated June 19, 1950, requesting extension of time for filing exceptions and brief, also requesting permission to argue orally before the Board. (Petitioner's request for oral argument denied, see Board's Decision and Order dated April 16, 1951.)

10. Petitioner's telegram, dated June 20, 1950, requesting further extension of time for filing exceptions and brief.

11. General Counsel's telegram, dated June 20, 1950, opposing Petitioner's request for extension of time for filing exceptions and brief.

12. Copy of Board's telegram, dated June 21, 1950, granting all parties extension of time for filing briefs.

13. Petitioner's telegram, dated July 28, 1950, requesting still further extension of time for filing briefs.

14. Petitioner's exceptions to the Intermediate Report, received July 31, 1950.

15. Copy of Board's telegram, dated August 2, 1950, granting all parties still further extension of time for filing briefs.

16. General Counsel's exceptions to the Intermediate Report, received August 2, 1950.

17. Document entitled Exceptions to the Intermediate Report and Recommended Order received from George Cody, Charging Party, on August 11, 1950.

18. Copy of Decision and Order issued by the National Labor Relations Board on April 16, 1951, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 15th day of June, 1951.

/s/ FRANK M. KLEILER,
Executive Secretary

[Seal] NATIONAL LABOR RELATIONS
BOARD

[Endorsed]: No. 12916. United States Court of Appeals for the Ninth Circuit. The Texas Company, a corporation, Petitioner, vs. National Labor Relations Board, Respondent. Transcript of Record. Petition to Review and Petition for Enforcement of Order of the National Labor Relations Board.

Filed: June 19, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12916

THE TEXAS COMPANY, a corporation,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR REVIEW AND TO SET
ASIDE A DECISION AND ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

To the Honorable Judges of the United States Court
of Appeals for the Ninth Circuit:

The Texas Company makes this petition pursuant to Sec. 10(f) of the National Labor Relations Act as amended by the Labor Management Relations Act of 1947, June 23, 1947, Ch. 120, 61 Stat. 136; 29 USCA, Sec. 151, et seq., herein called the National Labor Relations Act as amended, and states and alleges:

I.

The Texas Company, herein called the petitioner, is a corporation of the State of Delaware with its headquarters in New York City; that it is engaged in the production, manufacture, marketing, and distribution of petroleum products throughout the United States; that it is duly qualified to do business in all of the states of the United States, including the State of California; and that it transacts busi-

ness in the State of California and maintains offices at 929 South Broadway, Los Angeles 15, California.

That the National Labor Relations Board, herein called the respondent, is an agency of the United States Government existing by virtue of the National Labor Relations Act as amended and is charged with the enforcement of said Act.

That the foregoing is and was true at all times material hereto.

II.

That the General Counsel of the respondent issued a complaint against the petitioner, alleging that the petitioner committed certain unfair labor practices against one George Cody, and prosecuted the complaint against the petitioner before the respondent and its agents; that said proceeding was and is entitled "In the Matter of The Texas Company and George Cody, Case No. 21-CA-375"; that said case and another and separate case entitled "In the Matter of The Texas Company and Robert Rissman, Case No. 21-CA-295" were consolidated in the proceedings before the respondent and its agents and were included by the respondent in the same decision; and that this Petition and the relief hereinafter requested concerns only the case entitled "In the Matter of The Texas Company and George Cody, Case No. 21-CA-375."

III.

That on April 16, 1951, the respondent, by a majority of three members and with a dissent by two members, made and issued a Decision and Order in said Case No. 21-CA-375 directed against the peti-

tioner, a copy of which Order is attached hereto and made a part hereof; that said Order is a final Order of the respondent; and that the only relief from said Order available to the petitioner is a review of said Decision and Order by an appropriate United States Court of Appeals, pursuant to Sec. 10(f) of the National Labor Relations Act as amended.

IV.

That said Decision and Order of the respondent is based upon the refusal of the petitioner to reemploy said George Cody, a former supervisory employee of the petitioner, who had continued to work for the petitioner during a strike by the petitioner's nonsupervisory employees, but who refused to do some of the work assigned to him by the petitioner, as a result of which he was discharged by the petitioner; that the said Decision and Order and the findings and conclusions therein are not supported by, but are contrary to, the evidence concerning the nature of the application of George Cody to the petitioner for reemployment after the termination of the strike above mentioned, and concerning the reasons of the petitioner for refusing to reemploy George Cody; that said Decision and Order erroneously interprets and applies the National Labor Relations Act as amended to the refusal of the petitioner to reemploy George Cody, its former supervisory employee; that said Decision and Order raises important issues of law concerning the status of supervisory employees and the rights and obligations of employers and supervisory employees under said Act; and that the entire Decision and Order of the respondent and the

findings and conclusions therein are not supported by the evidence on the record before the respondent considered as a whole, and are contrary to the National Labor Relations Act as amended.

V.

That the unfair labor practices in question in said case were alleged to have been engaged in near Los Angeles, California, within the jurisdiction of this court; that the petitioner was at all times a party to the proceedings before the respondent and its agents; that the petitioner is aggrieved by the making and issuing of the Decision and Order of the respondent as above set forth; that the petitioner is a party aggrieved by a final Order of the respondent within the terms of Sec. 10(f) of the National Labor Relations Act as amended; that this Court is the United States Court of Appeals in the circuit wherein the unfair labor practices in question were alleged to have been engaged in by the petitioner and wherein the petitioner transacts business; and that this Court is an appropriate United States Court of Appeals wherein to obtain a review of said Decision and Order of the respondent and the findings and conclusions therein, and has power to review and set aside said Decision and Order and to grant the relief herein requested.

Wherefore, the petitioner prays that this Honorable Court review the Decision and Order of the respondent of April 16, 1951, in said Case No. 21-CA-375 and the findings and conclusions therein, pursuant to Sec. 10(f) of the National Labor Rela-

tions Act as amended; and that upon the filing with the Clerk of this Court of a copy of the notice to the respondent of the filing of this petition, together with proof of service of said notice, the respondent be directed to certify a transcript of the entire record of the proceedings and the Decision and Order in said case and all the pleadings, testimony, evidence, and other things or matters upon which the Decision and Order of the respondent was made, and to file such transcript, when so certified, with this Court.

Petitioner further prays that this Honorable Court make and enter a decree setting aside the said Decision and Order of April 16, 1951, of the respondent, the National Labor Relations Board in said Case No. 21-CA-375, and the findings and conclusions therein; ordering the dismissal of the complaint against the petitioner in said case; and granting to the petitioner such other and further relief as the Court may deem just and proper.

Dated at Los Angeles, California, May 2, 1951.

Respectfully submitted,

/s/ J. A. McNAIR,
CHARLES M. BROOKS,
Attorneys for the Petitioner.

ORDER

Upon the entire record of the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, The Texas Company, its agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discriminating with regard to the hire and tenure of employment of George Cody.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Oil Workers International Union, affiliated with the Congress of Industrial Organizations, or Locals 120 or 128 thereof, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act, and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer George Cody immediate employment as an employee in its pipe line division of the refining department, Pacific Coast Division, Los Angeles, California.

(b) Make whole George Cody in the manner set forth in the section entitled "The Remedy," for any loss of pay he may have suffered by reason of the Respondent's discrimination against him.

(c) Upon request, make available to the Board or its agents, for examination and copying, all pay-

roll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amounts of back pay due and the right of employment under the terms of this Order.

(d) Post at its office for the pipe line division of the refining department, Pacific Coast Division, Los Angeles, California, copies of the notice attached hereto.³⁶ Copies of said notice shall be furnished to the Respondent by the Regional Director for the Twenty-first Region, and shall, after being duly signed by a representative of said Respondent, be posted by it immediately upon receipt thereof, and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the said Respondent to insure that said notice is not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

Duly Verified.

[Endorsed]: Filed May 3, 1951. Paul P. O'Brien, Clerk.

³⁶ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

[Title of U. S. Court of Appeals and Cause.]

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD TO THE PETITION FOR REVIEW OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD, AND REQUEST FOR ENFORCEMENT OF SAID ORDER

To the Honorable, the Judges of the United States Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, herein called the Board, and pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29, U.S.C., Supp. III, Secs. 151, et seq.), herein called the Act, files this answer to the petition for review of an order issued by the Board against The Texas Company, Petitioner herein, and the Board's request for enforcement of said order.

1. Answering the allegations in paragraphs I, II, III, IV and V of the petition for review (pp. 1-3, 4-5), the Board prays reference to the certified transcript of the entire record of the proceedings before the Board filed herewith, for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law, and order of the Board and all other proceedings had in this matter.

2. Further answering, the Board denies each and every allegation of error contained in paragraph IV of the petition to review (pp. 3-4), and avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and

are in all respects valid and proper under the Act.

3. Further answering, the Board, pursuant to Section 10(e) of the Act, respectfully requests this Honorable Court to enter a decree enforcing its order issued against Petitioner on April 16, 1951, in the proceedings designated on the records of the Board as Case No. 21-CA-375, entitled "In the Matter of The Texas Company and George Cody." In support of this request the Board respectfully shows:

(a) This Court has jurisdiction of the petition herein and of this request for enforcement by virtue of Section 10 (e) and (f) of the Act, the unfair labor practices having occurred within this judicial circuit.

(b) Upon all proceedings had in said matter before the Board, as more fully shown by the certified record filed herewith, the Board, on April 16, 1951, duly stated its findings of fact and conclusions of law and issued an order directed to Petitioner (referred to in the order as Respondent), its agents, successors, and assigns. So much of the aforesaid order as relates to this proceeding provides as follows:

ORDER

Upon the entire record of the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, The Texas Company, its agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discriminating with regard to the hire and tenure of employment of George Cody.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Oil Workers International Union, affiliated with the Congress of Industrial Organizations, or Locals 120 or 128 thereof, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act, and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer George Cody immediate employment as an employee in its pipe line division of the refining department, Pacific Coast Division, Los Angeles, California.

(b) Make whole George Cody in the manner set forth in the section entitled "The Remedy," for any loss of pay he may have suffered by reason of the Respondent's discrimination against him.

(c) Upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amounts of back pay

due and the right of employment under the terms of this Order.

(d) Post at its office for the pipe line division of the refining department, Pacific Coast Division, Los Angeles, California, copies of the notice attached hereto.³⁶ Copies of said notice shall be furnished to the Respondent by the Regional Director for the Twenty-first Region, and shall, after being duly signed by a representative of said Respondent, be posted by it immediately upon receipt thereof, and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the said Respondent to insure that said notice is not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

(c) On April 16, 1951, the Board's Decision and Order were duly served upon Petitioner.

(d) Pursuant to Section 10 (e) and (f) of the Act, the Board is certifying and filing herewith a transcript of the entire record in the proceedings before the Board, including the pleadings, evidence, findings of fact, conclusions of law, and order.

Wherefore, the Board prays this Honorable Court

³⁶In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

that it cause notice of the filing of this answer and request for enforcement, and the filing of the certified record in this proceeding, to be served upon Petitioner, and that this Court take jurisdiction of the proceedings and of the questions to be determined therein, and make and enter upon the pleadings, evidence, and proceedings, set forth in the entire certified record of said proceedings, and upon so much of the order as set forth hereinabove, a decree denying the petition to review and set aside, and enforcing in whole said order of the Board, and requiring Petitioner and its agents, successors, and assigns to comply therewith.

Dated at Washington, D. C., this 15th day of June, 1951.

/s/ A. NORMAN SOMERS,
Assistant General Counsel, National Labor Relations Board.

NOTICE TO ALL EMPLOYEES PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will offer to George Cody immediate employment as an employee, and make him whole for any loss of pay suffered as a result of the discrimination against him.

We Will Not in any like or related manner interfere with, restrain, coerce, our employees in the exercise of the right to self-organization,

to form labor organizations, to join or assist Oil Workers International Union, affiliated with the Congress of Industrial Organizations or Locals 120 or 128 thereof, or any other labor organization to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act, or to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

Dated.....

THE TEXAS COMPANY

(Employer)

By

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Endorsed]: Filed June 18, 1951. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]

PETITIONER'S STATEMENT OF POINTS

Comes now The Texas Company, the Petitioner in the above-captioned proceeding and, in conformity with the rules of this Court, hereby states the Points upon which it intends to rely in its petition in this matter and hereby designates the parts of the record to be contained in the printed record, as follows:

Statement of Points

I) The Respondent's findings of fact, conclusions of law, and interpretations of the National Labor Relations Act, as amended, are not supported by substantial evidence on the record considered as a whole and are contrary to the provisions, intent, and policy of said Act.

(a) Cody did not engage in concerted activity within the meaning of Section 7 of the National Labor Relations Act, as Amended; nor did he make "common cause" with the striking employees.

(b) The refusal by the Petitioner to employ Cody did not, nor could it be inferred that it would, discourage membership of employees in a labor organization within the meaning of Section 8 (a) (3) of the National Labor Relations Act, as Amended.

(c) Cody's attempt to pick and choose the work he would perform would not be protected activity within the meaning of the National Labor Relations Act, as Amended, even if he had been an "employee" as defined in the Act.

(d) Cody did not make application for a job as a new employe.

(e) Cody was discharged for "cause" within the meaning of the National Labor Relations Act, as Amended; he was refused employment for a "cause" which was a "permissible criterion" for such refusal within the meaning of the Act.

(f) Petitioner did not make "a practice of downgrading to their former positions those who were unsatisfactory as supervisors."

(g) The performance of, or the omission to perform, an act need not be "tainted with illegality" for it to constitute a "cause" for which one may be discharged and/or refused employment.

(h) Activities which are unprotected by the National Labor Relations Act, as Amended, do not later become "protected" after legitimate and permissible disciplinary action has been taken.

(i) The Respondent's interpretation of the National Labor Relations Act, as Amended, contravenes the Congressional intent to disenfranchise supervisors and wholly remove them from any protection of the Act. The Respondent has attempted to do by indirection that which it is precluded from doing directly.

(j) Section 10 (c) of the National Labor Relations Act, as Amended, forbids the Respondent from ordering backpay to or the reemployment of Cody, who was admittedly discharged "for cause."

(k) If any discouragement of or interference with union membership were occasioned by the discharge of and refusal to employ Cody, it would be per-

missible under the Act.

(I) There is no finding or evidence of anti-union bias or illegal motive on the part of the Petitioner.

(II) The entire order of the Respondent should be set aside and the complaint dismissed as being repugnant to the intent, purpose and policy of the National Labor Relations Act, as Amended.

(III) Even if it is assumed that Petitioner violated the National Labor Relations Act, as Amended, Sections 1 (b) and 2 (d) of Respondent's order are unwarranted by the law and the evidence in that they go beyond the scope of the unfair labor practice found by Respondent to have been committed.

* * * * *

Dated at Los Angeles, California, June 28, 1951.

Respectfully submitted,

/s/ J. A. McNAIR,

CHARLES M. BROOKS,

Attorneys for the Petitioners.

[Endorsed] : Filed June 29, 1951. Paul P. O'Brien,
Clerk.